THE CENTRAL LAW JOURNAL

SEYMOUR D. THOMPSON, Editor. } ST. LOUIS, FRIDAY, SEPTEMBER 3, 1875. { Hon. JOHN F. DILLON, Contributing Editor.

POLITICAL REFORM IN JAPAN.—The Japanese government continues to make rapid strides in political reform. A parliament has been convoked, called the Genro In. It is not elective, but the members are nominated by the Emperor. It consists of a body of learned men, all of whom possess a certain rank in the empire. The following was the speech of the emperor on convoking the first session of this body:

I have come to you, gikuan (title of members), to open in person your chamber. As I have recently proclaimed, you have been appointed to constitute the Genro In, and important measures of the future will be passed by you. I trust that you will discharge your duties to the best of your ability, and will direct your efforts to the establishment of peace and concord among all classes, high and low, of the empire. All of you are ordered to aid in the works I have undertaken, and not to forget my words.

Among the first acts of the Genro In, was a law regulating the press. In order to appreciate this, it must be remembered that the newspaper is of recent origin in Japan; and not having been heretofore subjected to governmental restraint, has assumed the most unbridled license. The new decree is that newspapers must be registered, that responsibility is one of the conditions of proprietorship, that articles must be signed by their writers and that seditious publications are forbidden. Special penalties, not excessive, are provided for infractions of these rules.

THE TRAMP NUISANCE.—From all parts of the country, but more especially from the New England and Middle states, we have accounts of men roaming about the country singly, and in small parties, asking for subsistence at houses, and committing thefts, robberies, burglaries, and even in some cases rape. The press is seriously discussing what remedies should be adopted to rid the agricultural communities of this nuisance. No remedy will be effective unless it has a two-fold operation, and removes the cause as well as punishes the offence. The removal of the cause is purely a question for statesmen, and not especially for lawyers,. Whatever will remove hard times and give work to thousands of laboring men who can not now obtain it, will greatly diminish this evil, though it will not entirely destroy it. To complete its destruction, stringent vagrant laws are needed, under which persons who go about the country begging shall be arrested and *put to work*. We do not understand how far the existing laws against vagrancy in the various states may be effective for the suppression of this evil; but we learn that New Hampshire has a very severe law against tramps, which has been very effectual in abating these nuisances. If such there be, going from place to place asking or subsisting on charity, or without visible means of support, they may, upon due complaint, be sentenced to hard labor upon any county farm or town farm, or in any house of correction or common jail, for a period not exceeding six months.

A NEW EDITION OF STORY'S EQUITY JURISPRUDENCE.—A work has been recently issued by Willing & Williamson, of Toronto, Canada, entitled "Commentaries on Equity Jurisprudence, founded on Story, by Thomas Wardlaw Taylor, Master in Chancery." The London Law Times, notices this work in the following language:

A very questionable compliment seems to us to be paid to the eminent American jurist, Story, by the author of this work. The preface informs us that some way had been made in the preparation of an edition of Story's Equity Jurisprudence, but "the necessary omissions, additions, and alterations were found to be so great that the original intention had to be abandoned." It is then added that whatever of value the work contains is the production of Story. We scarcely understand the position. If a great number of omissions and additions were necessary in an edition of Story, but the present work contains nothing of value, except that which is taken from Story—what can be the worth of the present work? It can not contain the additions which would have been necessary in a new edition of Story, but nevertheless are in this work, if it is at all complete. Yet such additional matter is not, on the author's own showing, of any value. Perhaps, however, we ought not to be too severe on the preface; and after carefully looking through the work, we come to the conclusion that it contains quite enough of Story to convey clear elementary notions of equity jurisprudence to the law student. The various heads are dealt with clearly and succinctly, and masses of English and American cases are cited in the foot-notes. This massing of authorities is rather a fault with trans-Atlantic text writers, and we should be very glad to see some distinction made between authoritative and comparatively unimportant decisions. And Mr. Taylor would have done admirable service had he weeded Story instead of slavishly copying him. He is, however, safe in the shadow of a great name, and he has brought down the legislation of Ontario, and the Canadian cases to the present day.

THE REVISED STATUTES OF THE UNITED STATES.—The St. Albans (Vt.) Messenger has recently interviewed Hon. Luke P. Poland, late Chairman of the Judiciary Committee of the House of Representatives, concerning the revision of the United States statutes. Judge Poland is reported to have said:

There are in the cities a large number of men known as customs brokers, who ply between the importers and the treasury department, and have for many years enjoyed a lucrative business. Previous to the revision, the statutes on the tariff were in a hopeless muddle, having been annually patched and tinkered since 1842 without specially repealing anything, but using the general clause, "All acts and parts of acts inconsistent herewith are hereby repealed." From time to time a great many questions had arisen as to what was really the law, and these had been passed upon by the commissioners of customs and the law officers of the government, until the department was encumbered with rulings, many of which were discovered to be in actual conflict with some of the unrepealed portions of the law. Of course, such a complicated mass of law and authority upon a subject which affected the entire commerce of the country and involved untold millions of capital, was a rich placer for these customs brokers to delve in. But unfortunately for them, the revision swept it all away. They awoke one morning and found their occupation gone. That was when Congress had passed the condensed statutes, doing away with everything else, rulings, enactments and muddle, and giving the country a law that is so plain that a wayfaring man, though a fool, need not err therein, and that, even the merchants and editors of New York and Boston can understand, if they will only get a copy and dispense with the services of the men whose interest it is to prey upon their credulity and to deceive the public through the press.

He alluded to a mention which he saw in the dispatches a few days ago that Collector Simmons had gone to Washington to obtain instructions in regard to the law. It was made prominent in head-lines that the revision was wrong, and a section had been inserted which was contrary to the common understanding, rulings and practice for years. Having the revision and the annual statutes at hand, the judge had the curiosity to look the matter up, and, just as he expected, he found a statute nearly thirty years old, but never repealed, which was word for word the section complained of. One great cause, he said, of the criticism which is being tossed about, is the fact that under the revision the government will probably collect something like $5,000,000 more revenue each year than it did before. Of course the importers are not especially pleased with this and would be glad to create a clamor which might result in repeal or modification. But with that he had nothing to do; whether the revision yields more or less revenue than was collected before was no more his concern than that of any other citizen; he only knew that he and

his committee had codified the law, and nothing but the law, and by that work he was willing to stand.

Annual Conference of the Association for the Reform and Codification of the Law of Nations.

The annual meeting of the conference of this association convened on Wednesday, at the Hague. Among the American members present were David Dudley Field, Judge Peabody and Messrs. Pruyn and Sprague. Mr. Field is president of the association. Dr. J. B. Miles, of Boston, secretary of the association, has, we understand, visited London, Paris, and other European capitals, for the purpose of making preparations for the meeting. This year's conference promises to be an occasion of exceptional importance and interest. We gather from one of our exchanges the following facts relating to it: "A local committee, of which Dr. Bredus, of the States-General, and Dr. Bachiene, counsellor of state, are members, has made full arrangements, and the government of Holland has made a generous appropriation for the welcome of delegates. A large number of distinguished men from different countries have signified their purpose to attend. The inaugural meeting is to be held in a salon of the Hotel des Arts et Sciences, on Wednesday, September 1, at eleven o'clock in the forenoon, and the sittings of the conference will take place in the first chamber of the states-general. The object of this association is to secure an international code of law and an international tribunal, as a provision for the regulations of the nations and the peaceful settlement of their differences, and papers will be read, and discussions will take place upon subjects embraced within this object. This movement originated less than three years ago, but it has already identified with it names of world-wide reputation as writers upon international law, and as men of influence in public affairs. It has held two meetings, the first at Brussels, in October, 1873, and the second at Geneva, last September, both of which were quite successful, and the proceedings of which excited much attention. It seems to be destined to accomplish a great and good work."

The following is the programme of this year's meeting:—

The inaugural meeting will take place in a salon of the Hotel des Arts et Sciences, at The Hague (Zwarte Weg), on Wednesday, the 1st day of September, 1875, at eleven o'clock in the forenoon. The conference will hold its sittings in the assembly room of the first chamber of the States-General. Gentlemen attending the conference are required to sign a list setting forth their Christian and surnames, profession and place of abode, which list will be open for signature and inspection at the office of the Honorary Secretary, Dr. Beelaerts van Blokland, at the last-named address.

Reception of the members by the Local Committee of the Hague.

Installation of and opening address by the president of the conference.

Report of council as to the election of members.

Annual report of the association, recommendations of council and reports of special committees appointed at Geneva.

Communication of letters, memorials, etc., addressed to the conference.

Proposed order of proceedings and announcement of arrangements of the local committee.

On subsequent days papers will be read and discussion take place in reference to the following subjects, according as the council may determine:—

Subjects recommended by the American committee:—

a. The formalities and delays which it is desirable should be observed by nations before engaging in war.

b. The limits to arbitration for the settlement of international disputes.

c. Codification of the law of nations. The progress in this respect since the conference at Geneva, 1874.

Subjects recommended by the council—public international law:—

a. The duties, if any, of a neutral state to prevent the despatch from its ports of vessels of war, and the export of munitions of war.

b. Is it practicable to regulate by an international act, the laws and customs of war, and, if so, within what limits?

Subjects recommended by the council—private international law:—

a. Bills of exchange and other negotiable securities. The assimilation of the laws and practice relating thereto.

b. Foreign judgments. The laws and practice in regard to these, and the mode of their enforcement.

c. Patent law. The assimilation of the laws in different countries, and report on the proposed English law on the subject of patents.

d. Collisions at sea. The rules of navigation for their prevention.

Reading of papers on miscellaneous subjects, to be approved by the council.

Judge Sawyer's Charge in the Lee Case.

"W. E.," in his letter published in this JOURNAL on page 545, Aug. 20, criticises the opinion of Judge Sawyer in the case of Lee v. Guardian Life Ins. Co., printed by us on pages 495 to 489, and is "surprised" that we attributed to that opinion a "high judicial tone." On reviewing the opinion we adhere to that estimate. We are convinced that the judge who charged the jury in that case exhibited the high judicial trait of impartiality, and we meant this in our comments, and not that the instructions given would be sustained by the supreme court, or that they would please all our correspondents. We look for the "tone" of an opinion, to the qualities of intelligence, probity and conscientiousness which it exhibits; and if Judge Sawyer's opinion differed from all those cited by "W. E.," but gave candid and impartial reasons for such difference, grounded in legal principles, the "tone" of his opinion would not be lowered because he might be in a minority.

But does "W. E." do justice to the opinion he criticises? He uses this language:

"It is obviously just that no applicant guilty of a fraud shall be entitled to recover on a policy obtained by that means; but it is remarkable to announce that where the applicant is entirely truthful and innocent, and the company's agent is guilty of a fraud in which the applicant *in no degree* participates, the insured can not recover, unless he proves that the company expressly authorized the fraud; and yet that is in effect the general principle announced by Judge Sawyer."

This we think an erroneous reading of the opinion. Judge Sawyer told the jury, that where the applicant participated in a fraud committed by the insurance company's agent, either by active co-operation or *by becoming through gross negligence the passive and culpable instrument* of that agent, the policy would be void for such fraud, (p. 497). This was the salient point in the case, as Judge Sawyer looked at it. He left specially to the jury (p. 498), the question whether the applicant had an opportunity to know the contents of his application which the agent had filled up. The jury found this fact against the applicant. This feature of the case can not be ignored by "W. E.," if he desires fairly to expose the "effective vice" of the opinion, or its "radically wrong tendency."

But "W. E." thinks that Judge Sawyer departed from the rules of law applicable to persons and parties other than insurance companies, and insists that there is no peculiar sanctity about such companies nor their modes of business. We fear our correspondent has himself gone to an opposite extreme, and would give sanctity and peculiar immunity to all those who antagonize the insurance corporations in litigation.

Judge Sawyer had certainly the apparent authority of the

very familiar rule that where one of two innocent persons must suffer by the fraud, negligence or unauthorized act of a third, he alone should suffer who gave the opportunity to that third to work the deceit or injury; which rule was applied in terms by the Supreme Court of Connecticut in Ryan v. World Life Ins. Co., 4 Ins. Law Journal, 37. Would "W. E." deny the application of this rule to any other party than an insurance company? The case which he cited, Cheek v. Columbia Ins. Co., 1 C. L J. 465, holds that "if actual collusion be shown between the agent and the insured, the cause would be different" from that one. On examining our correspondent's citations from May on Insurance, we are unable like him to read them as militating against Judge Sawyer's opinion. That author agrees with Judge S. upon the question of collusion, and says further, at p. 627, that the "knowledge of the agent is imputable to the principal, on the presumption that the agent, in the honest discharge of his duty, communicates to his principal all the material facts, touching the negotiation, which came to his knowledge—a presumption which can hardly have place when the facts to be communicated would convict him of a dereliction of duty." Suppose, in counterpoise of this presumption, the facts which the jury found in the Lee case are known to exist, should they not be noticed by the judge in any other than an insurance case? If they should, then why not in an insurance case also? A person is bound by his silence, when good faith requires him to speak out if he dissents. 1 Pars. Cont. 476; Chitty Cont. * p. 22. Is this principle wholly inapplicable to a case of insurance?

But we do not design to discuss the question here, or to examine the cases referred to by "W. E.," as that would require more space than we can surrender. Nor would we be understood as insisting on more than that Judge Sawyer's opinion is entitled to respectful consideration.

As to the leading case in 13 Wall., of Insurance Co. v. Wilkinson, it certainly differs, as Judge S. contends, from the Lee case, in certain important facts. The applicants there were negroes, who, having been lately slaves, were presumably ignorant. The question of their *opportunity* to know the contents of the application does not figure in that case. If given to a jury as in the Lee case, the finding might have been, even under Judge Sawyer's rulings, such as to compel the same judgment given in 13 Wall. The Supreme Court of the United States has, it is true, given, in the later case of Amer. Life Ins. Co. v. Mahone, 4 Ins. L. Jour. 291, a *dictum* which goes farther than the 13 Wallace case, and is opposed to Judge Sawyer's ruling on this question of opportunity, having been published since the Lee case was tried. But this *dictum* should not prevent that court from affirming the decision in the Lee case, if that proves to be the more just rule. At all events, we do not see why it is not fairly an open question whether an applicant for life insurance shall not be bound by his silence and take upon himself the consequences of his ignorance, when he has a fair opportunity to enquire and to be informed.

—PROF. SHELDEN AMOS has written, and Longmans, Green & Co. have published, "A primer on the English Constitution and Government, for the use of Colleges, Schools and Private Students." The publication of such works, is a hopeful sign of the tendency to introduce into the schools, as a part of every course of education, the study of the elements of law and constitutional government.

Life Insurance—No Forfeiture for Failure to Pay Interest on Premium Note.

CHARLES OHDE, ADM'R, ETC., v. NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

Supreme Court of Iowa, April 22, 1875.

Hon. JOSEPH M. BECK, Chief Justice.
" WM. E. MILLER, } Associate Justices.
" CHESTER C. COLE, }
" JAMES G. DAY, }

Life Insurance—Construction—What Constitutes Payment of Complete annual Premium—Policy not Forfeited for Failure to pay Interest on Premium Note.—A policy on the ten-year plan provided that if default should be made in the payment of any premium, the company would pay as many tenth parts of the original sum insured as there shall have been complete annual premiums paid, at the time of such default. The premiums were payable, part in cash and part in notes. The notes provided that the interest on them shall be paid annually, or the policy be forfeited. Two annual premiums, part in cash and part in notes, as the interest due had been paid, and then default was made. *Held*, that this constituted payment of two complete annual premiums, and there could be no forfeiture as to two-tenths of the whole sum named in the policy, for subsequent failure to pay interest on the outstanding notes.

This is an action by the plaintiff as administrator of Charlotte Warnecke, deceased, upon a life insurance policy issued by the defendant upon the life of William Warnecke, deceased, for the use and benefit of said Charlotte, in the sum of fifteen hundred dollars.

Verdict and judgment for plaintiff. Defendant appeals. The further facts appear in the opinion.

Shiras, Van Duzee & Henderson, for appellant; *Wilson & O'Donnell*, for appellee.

MILLER, CH. J.—The policy on which suit is brought is as follows:

"No. 11,299, age 43, amount $1,500, premium $92.93.

"The Northwestern Mutual Life Insurance Company by this policy of assurance,

"In consideration of the representations made to them in the application for this policy, and of the sum of twenty-four dollars and eighty-four cents to them in hand paid by Charlotte Warnecke, wife of William Warnecke, wood-dealer, and of the annual premium note of forty-three dollars and twenty-five cents, and the semi-annual cash premium of twenty-four dollars and eighty-four cents, to be paid at or before noon on or before the twelfth day of July and January in every year during the first ten years of the continuance of this policy, do *assure* the life of William Warnecke, of Dubuque, state of Iowa, for the sole use of the said Charlotte Warnecke, in the amount of fifteen hundred dollars, for the term of his natural life.

"And the said company do hereby *promise and agree* to pay the said sum assured, at their office, to the said assured, or her executors, administrators or assigns, in ninety days after due notice and proof of death of the said person whose life is hereby assured (the balance of year's premium and all notes given for premiums, if any, being first deducted therefrom), and in case of the death of the said assured before the death of the said person whose life is assured, the amount of the said insurance shall be payable to the heirs at law of said William Warnecke.

"And the said company further promise and agree that if default shall be made in the payment of any premium, they will pay as above agreed, as many tenth parts of the original sum insured as there shall have been complete annual premiums paid at the time of such default.

"*This policy* is issued and accepted by the assured on the following express conditions:

"1st. If the said person whose life is hereby assured shall pass beyond the settled limits or government of the United States (except into the settled limits of the two Canadas, Nova Scotia, or New Brunswick), or west of the 100th degree of west longitude, or north of the 40th degree of north latitude, or between the 1st of July and the 1st of November, south of the parallel of the southern

boundary of the state of Tennessee; or shall enter upon an aerial voyage, or a voyage on the high seas, or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances, or in working or managing a steam engine in any capacity, as a mariner, engineer, fireman, conductor, or laborer in any capacity upon service on any sea, sound, inlet, river, or railroad, or shall enter any military or naval service whatsoever (except into the militia when not in actual service), without previously obtaining the consent of this company, in writing in each, or either of the foregoing cases; or if he shall die by his own hand, or in consequence of a duel, or of the violation of any law of any nation, state or province, or of any injury received while in a state of intoxication, or if he shall become so far intemperate as to impair his health or to induce delirium tremens, or shall engage in, aid or abet any insurrection against the government of the United States, or any state thereof, or, if any of the statements or declarations made by or for him in the application for this policy, bearing date the 22d day of June, 1865, upon the faith of which this policy is issued, shall be found in any material respect untrue, then, and in every such case, this policy shall be null and void.

"2nd. If the said premium or the interest upon any note given for premiums, shall not be paid on or before the day above mentioned, for the payment thereof, at the office of the company, or to agents when they produce receipts signed by the president or secretary, then, in every such case, the company shall not be liable for the payment of the whole sum assured, and for such part only as is expressly stipulated above.

"3rd. In every case where this policy shall cease and determine or become null and void for other reason than non-payment of premium, all payments thereon shall be forfeited to this company.

"4. If the said person whose life is hereby assured, shall become in any sense an inebriate, the company shall have the right to declare this policy canceled, and shall be absolved from all liability under it, on paying or tendering in payment to the holder thereof the amount of the "surrender value" at the time of such payment, or tender as determined by the company's tables.

"5th. If this policy is assigned or held as security, written notice shall be given to this company, and due proof of interest produced with proofs of death.

"6th. This policy shall not take effect and become binding on the company until the cash premium shall be actually paid to the company, or to some person authorized to receive it during the life-time of the person whose life is assured.

"*In witness whereof the said Northwestern Mutual Life Insurance Company*, at their office in Milwaukee, have by their president and secretary, signed and delivered this contract, this twelfth day of July, one thousand eight hundred and sixty-five.

S. S. DAGGETT, President.

"A. W. KELLOGG, Secretary."

The following statement of facts was admitted in evidence on the trial:

"1st. The policy sued on was issued July 12, 1865, at which time the semi-annual payment of $24.84 was made, and a note for $43 25 was executed by Warnecke, of the following form, *i. e.*, as shown by exhibit "B." Upon the making of this payment, and the execution of the note, the policy was delivered to Warnecke.

On the 12th of January, 1866, the semi-annual payment was made. On the 12th of July, 1866, the semi-annual payment of $24.84 was made; also, the year's interest on the note above described, and a second note of like form and tenor for the sum of $43.84, being exhibit "C.," was executed by Warnecke and delivered to the defendant, and proper renewal receipt was delivered to Warnecke, in the following form. Exhibit "A." On the 12th of January, 1867, Warnecke failed to pay the semi-annual cash payment then coming due, and failed to pay the annual interest then due, for the past year upon the two notes above described. No payments have since been made on said policy, or on the notes above described.

"Wm. Warnecke died at Dubuque, Iowa, on the 25th of October, 1869, of a natural death. His widow Charlotte, inter-married with one Whitman, and died subsequent to the institution of this suit. The present plaintiff has been appointed administrator of her estate by the Circuit Court of Dubuque County, Iowa. Proofs of death were furnished, and notice of his death given to defendant, on or about July 12th, 1871.

"Facts touching the payment of premiums.

"By section 13, charter of the company, it is provided: 'That the officers of said company may cause a balance to be struck of the affairs of the company, annually, biennially, triennially or once in five years, as the board of trustees may determine, and shall credit each member with an equitable share of the profits of said company.'

"The company commenced business in 1858. The first division of surplus was made in 1864, on the business of the five preceding years; the next in 1867, on the business of 1864; in 1868, on the business of 1865; in 1869, on the business of 1866; in 1870, on the business of 1867.

"From 1858 to 1869, when a change was made in the note system, it was the established rule and custom of the company to collect the annual interest coming due on the premium notes in cash, the dividends being applied exclusively to the payment of the principal of the notes.

"By section 13 of the charter of the company, it is provided, that 'any member who would be entitled to share in the profits, who shall have omitted to pay any premium, or any periodical payment due from him to the company, may be prohibited by the trustees from sharing in the profits of the company.'

"In apportioning the surplus in the shape of dividends, the trustees have uniformly refused to allow dividends to those persons who at the time the dividend was declared were in arrears to the company.

"Under this rule, when, in 1868, a dividend on the business of 1865 was made, no dividend was allowed on the policy to Warnecke, because of his not paying his second premium note for $43.25, given July 12, 1866, and the interest thereon (as well as on the first note), coming due July 12, 1867.

"For the same reasons, when, in 1869, a dividend was declared on the business of 1866, no dividend was allowed on said policy to said Warnecke, and for the like reasons, none was allowed on the dividend declared in 1870, on the business of 1867.

"In figuring up the dividends for the years 1865, 1866 and 1867, and since that date, the policy of Warnecke and all others similarly situated, were treated by the company as lapsed policies no longer binding upon the company.

"The per cent. of dividends declared and paid to the policy-holders in the year 1868, on the business of 1865, was thirty (30) per cent on the total amount of each annual premium.

"On the business of 1866, declared and paid in 1869, thirty-five per cent. on the total amount of each annual premium. And a like percentage on the business of 1867, declared and paid in 1870.

"The defendant is a corporation duly organized under the laws of the state of Wisconsin; is a mutual company, and the headquarters of its business or home office, is at Milwaukee, Wisconsin.

"There was never any surrender of the premium notes by the company to the insured, nor offer so to do, neither was there a surrender of the policy by Warnecke.

"No demand was ever made upon Warnecke at any time for payment of the principal of either of the two premium notes given July 18th, 1865, and July 12th, 1866.

"*Wilson & O'Donnell*, for plaintiff; *Shiras, Van Duzee & Henderson*, attorneys for defendant."

The two notes executed by William Warnecke are as follows:

"$73.25. DUBUQUE, July 12th, 1865.

For value received, I promise to pay to the North Western Mutual Life Insurance Company, forty-three 25-100 dollars, with interest at the rate of seven per cent. per annum, which interest shall be paid annually or the policy forfeited; this note being given for part of the premium on policy No. 11,299, is to remain a lien on said policy until the death of William Warnecke, when it shall be deducted from the amount of said policy, unless sooner paid. The dividends on the policy are to be applied to the payment of the note No. one. WM. WARNECKE.

"$43.25. MILWAUKEE, July 12th, 1866.

For value received, I promise to pay to the North Western Mutual Life Insurance Company, forty-three and 25-100 dollars, with interest at the rate of seven per cent. per annum, which interest shall be paid annually or the policy be forfeited; this note being given for part of the premium on policy No. 11,290 is to remain a lien upon said policy until it becomes due by limitation, or by the death of Wm. Warnecke, of Dubuque, when the note shall be deducted from the said policy, unless sooner paid.

"The dividends on the policy are to be applied to the payment of the note.

"Note No. 2. WM. WARNECKE."

The policy was issued in consideration of the representations made to the company in the application for the policy, and of the sum of twenty-four dollars and eighty-four cents, cash paid in hand, an annual premium note for forty-three dollars and twenty-five cents, and the same annual cash premium of twenty-four dollars and eighty-four cents, to be paid on the 12th day of July and January of each year during the first ten years of the continuance of the policy.

For this consideration the company promise by the policy to pay the amount of the policy at the death of the assured, upon proper proof and notice thereof, less the balance of the year's premiums, *and all notes given for premiums*, if any. In ascertaining the true interpretation of the contract of insurance, the whole instrument and the terms of the notes executed in pursuance of the contract, must be looked to and considered. One of the conditions of the policy, is, that if the premiums or the interest upon any note given for premiums, should not be paid on or before the days mentioned in the policy for the payment thereof, then in every such case the company should not be liable for the payment of the *whole* sum assured, and for such part only as is expressly stipulated in the policy.

This express stipulation is as follows: "And the said company further promise and agree, that if default shall be made in the payment of any premium, they will pay as above agreed, as *many tenth parts of the original sum insured, as there shall have been complete annual premiums paid at the time of such default.*"

What, then, is to be considered as the payment of "complete annual premiums?"

It is, we think, quite clear from the whole contract, that the entire premium for each year was to be $92.93, payable in two semi-annual cash payments of twenty-four dollars and eighty-four cents each, on the 12th day of July and January, and the execution of a note to the company for the sum of forty-three dollars and twenty-five cents, with interest at seven per centum; that these cash payments were to be made, and such a note executed each year for the "first ten years" of the policy; that it is not contemplated that these annual premiums notes are to be paid each year as a condition to the continuance of the policy, on the contrary, the second condition in the policy expressly provides for, and requires only the interest upon these notes to be paid, together with the cash premiums.

This condition exonerates the company from liability to pay the whole sum in case the "*premiums or the interest upon any notes given for premiums* shall not be paid," etc. This language is utterly inconsistent with the idea that a failure to pay the *principal* of these notes annually, should work a forfeiture of the policy to any extent. The agreement is to pay money *and give notes* bearing interest each year, and to pay the interest accruing upon these notes. It is beyond question that the assured would have no right to insist that the company should receive the entire premium in cash, for that they have not agreed to do; they have stipulated for interest-bearing notes instead. More than this, the assured was under certain circumstances entitled to have his share of dividends applied on the notes, which also proves that these notes were to be made annually, the interest to be paid annually by the assured, and the principal to remain unpaid, except as dividends were applied to that end, and to be liens on the policy until they should become due by limitation or death of the assured, when they should be deducted from the policy.

The doctrine is well settled in this state that the giving of a note does not operate as payment of a precedent debt, unless it is so agreed by the parties; but that doctrine does not apply to this case. Here the agreement on the part of the assured, was to make certain semi-annual *cash* payments, and execute annual notes, and to pay the interest falling due upon such notes. The payment of the principal of the notes being otherwise provided for, first, by dividends due the assured, and second, by deduction from the amount of the policy when that became payable. It follows, therefore, that when the assured had made the semi-annual cash payments in July and January, executed and delivered his note for the balance of the premium as stipulated in the policy, and paid the interest due, if any, on the previously executed note or notes, then a "complete annual premium" was paid. This the assured performed for two years, which entitled his widow, upon his death, to two-tenth parts of the whole sum named in the policy, deducting therefrom the amount of the two premiums notes and their accrued interest. In accord with this view the court charged, and the jury found their verdict.

The judgment thereon will be affirmed.

NOTE.—This case, with the case of Saint Louis Mutual Life Insurance Company v. Amanda L. Grigsby, 2 CENT. LAW JOURNAL, 123 (4 Bigelow Life and Acc. Ins. Reports, 633), and the case of Clinton O. Dutcher *et al.* v. Brooklyn Life Ins. Co., 2 CENT. LAW JOURNAL, 153 (4 Big. 665), would seem to settle a point satisfactorily. When the other conditions of the policy have been met so as, under the policy, to entitle the holder to a non-forfeiting, or a paid-up policy to any amount, there can be no forfeiture as to that amount for failure to pay interest on an outstanding loan-note. If the companies agree in a policy to secure to the holder the proportional part of the principal sum assured, that the payments made are to the entire term of payments of premium, on the policy-payments of premium being made as they require in the policy, they can not violate the agreement and insist on a forfeiture for non-payment of interest on a premium or loan note. Such a ruling would follow from the clear reasoning of this case, or, from the reasoning in the Grigsby case, which in part considers the policy hypothecated to secure payments, such as that of a loan note—or interest on a loan note, and in part considers the loan note as a simple debt collectible as other debts, and that in each case there could be no forfeiture for non-payment of either note or interest, and in part considers the question upon equitable principles, and then denies the right to forfeit for so small a sum as interest on a loan note—or, from the reasoning in the Dutcher case, in which the loan notes are (and of course the interest on them also) regarded as sums only to be accounted for on the *final* payment of the policy, the entire contract being easily reconciled with itself in this way, and not otherwise. This ruling was followed in the recent case of Margeretha Smith v. Manhattan Life Ins. Co., Supreme Court of New York, of which there is not a full report given as yet. The report of the daily papers does not give the reasoning, further than to say that the court held that such interest, was interest on a loan and premium, and that there could be no forfeiture for failure to pay interest as a loan.

Such a ruling follows—under these cases—from a fair and equitable view of the right of insurer and insured, considering the fact that the policy is professedly non-forfeiting—that the insured has complied with the terms of the agreement as to the manner of payment of premium—done all he could to make complete annual payments—and that this ruling affords abundant safety to the companies. The writers on insurance, particularly May and Bliss, sustain this ruling, so far as what is said is applicable, and a great array o

cases, with more or less distinctness, recognize principles which directly support the reasoning that leads to such a decision. Of numerous cases a few may be cited: McAllister v. New England Mutual Life Insurance Co., 1 Big. 293, 101 Mass. 558; New England Mutual Life Insurance Co. v. Hasbrook's Admin., 2 Big. 27, 32 Ind. 447; Boker v. Union Life Insurance Co., 1 Big. 595, 6 Abb. Pr. (N. S.), Supreme Court, 144; Hodsden, Admx., v. Guardian Life Insurance Co., 1 Big. 218, 97 Mass. 144; Kentucky Mutual Insurance Co. v. Jenks, 1 Big. 101, 5 Ind. 96.

This ruling is in accord with the principle uniformly recognized that language must be interpreted most strongly against the one preparing the contract, because it is his language. This has been applied to policies of insurance in may cases. Young, Admr., v. Mutual Life Insurance Co., 4 Big. 1, U. S. S. C. C. California, 1873; May on Insurance, 181; Tiernay v. Ethrington, 1 Burr. 34; Dow v. Hope Insurance Co., 1 Hall, N. Y. Superior Court, 174; Hoffman v. Ætna Insurance Co., 32 N. Y. 405; Westfall v. Anderson River Fire Insurance Co., 2 Duer, N. Y. Superior Court, 490; Cropper v Western Insurance Co., 32 Penn. St. 351; Bartlett v. Union Mutual Fire Insurance Co., 49 Me. 500; 2 Bla. Com. 12th Ed. 380; Rodger v. The Comptoir d' Escompte de Paris, L. R. 2 P. C. 393; Broom Legal Max 7 Ed. 550. A contract should be construed by the courts, *ut res magis valeat quam pereat.*

It will be noticed that by the statement of facts agreed upon as recited in the opinion the recovery was too large. Warnecke had executed two notes for the entire sums for which notes were to be given for two years, and had paid the interest on the first note when the second was executed. But the opinion says he had made but three semi-annual payments; this would not entitle him to two full tenths, though the judgment was given for that amount. The brief of the appellant, however, says that *four* semi-annual payments were made, and therefore the statement in the opinion is erroneous, and the judgment was for the proper amount according to the facts. The omission will doubtless be noticed before it it perpetuated in the Reports.

J. A. F.

Bankruptcy—Debts Barred by Limitation.

IN RE NÆSEN.

United States District Court, Eastern District of Wisconsin, August, 1875.

Before Hon. CHARLES E. DYER, District Judge.

A debt barred by the statute of limitations of Wisconsin, is not provable against the estate of a bankrupt.

DYER, J.—The single question here presented is, whether a claim barred by the statute of limitations of the state of Wisconsin, is provable in bankruptcy. The question arises upon a contest between the petitioning creditors and the debtor, the latter seeking to defeat the petition on the ground that one-fourth in number and one-third in amount of creditors holding provable debts against him, have not joined in the petition. To support this claim, he interposes demands against himself, in favor of his father-in-law, on their face barred by the statute of limitations The bankrupt act provides, that a petition for adjudication must be made by one or more of the debtor's creditors, who shall constitute one-fourth thereof at least in number, and the aggregate of whose debts provable under the act amounts to at least one-third of the debts so provable. Is a demand, barred by the statute of limitations of this state, a debt, owing by the bankrupt and provable under the act? In England the question has been put at rest by adjudications that a debt, the recovery of which by action may be defeated by a plea of the statute of limitations, can not be proved in bankruptcy. *Ex parte* Dewdney, 15 Vesey, 479; *Re* Clendening, 9 Irish Eq. Rep. N. S. 287; 1 Christian Bankruptcy, 221.

Four cases are reported in the 1st vol. of N. B. Register Reports, which I proceed to notice. In *Re* Kingsley, 1 N. B. R. 329, one of the questions was, whether a debt barred by the statute of limitations of the state of Massachusetts, where the bankrupt then resided and where the proceedings were had, but not barred by the statute of limitations of Vermont, where the creditors resided, and where both parties resided when the contracts were made, could be proved against his estate in bankruptcy. Upon a full discussion of the question, Judge Lowell decides that a debt barred by the statute of limitations of the state where the bankrupt resides, can not be proved against his estate in bankruptcy. The decision is made to rest upon the English authorities and upon the principle that statutes of limitation are remedial, and that after the lapse of the statutory period for bringing actions, payment must be presumed. It must, however, be observed, that in this case the question was whether the claim *could be proved*, not whether it was *provable*. Judge Lowell says, "There can be no doubt that this is a provable debt, and that it will be discharged by the certificate if the bankrupt obtains one. All debts which by their nature are provable, are discharged whether they in fact could be proved or not. * * Because this debt is provable, it does not follow that it can be proved. The question is, whether it is a debt at all. * * * Applying the law of the forum, I find as a presumption of law, that this provable debt has been paid." Thus a distinction is taken between a provable debt, and a debt which, though provable, can not be proved. So that it will be seen, this case is not an authority fully applicable to the question we have here; for the point here is, is such a debt provable.

In *Re* Harden, 1 N. B. R. 395, Judge Fox, following Judge Lowell, holds, that a debt barred by the statute of limitations of Maine, where the bankrupt resided, could not be proved against his estate in bankruptcy by a creditor resident in another state. He says, "I have no doubt that for the purposes of the discharge, these demands are to be considered as provable debts, and that if the bankrupt obtains his discharge, he will be protected against them. Such demands are of a provable character, but are no longer due and payable within the meaning of the act, because the law of the forum, designated by Congress for the adjudication of the matter, presumes they are paid, and a paid demand no longer exists as a provable legal cause of action against the debtor."

In *Re* Sheppard, 1 N. B. R. 439, Judge Hall, adopting the views of Judge Blatchford, in a case which will be next noticed, holds that a debt barred by the statute of limitations of the state in which the bankrupt resides, may still be proven against his estate in bankruptcy. The principles he invokes are, that a debt against which the statute of limitations has run, is still a debt; that the operation of the statute does not extinguish the debt but only affects the remedy, and that statutes of limitation have no effect beyond the territorial limits of the state enacting them.

In *Re* Ray, 1 N. B. R. 203, Judge Blatchford gives to the question an elaborate examination. Conceding the rule in England to be as stated, he makes a distinction between the English statute of limitations and the statutes of limitations in the American States. He says "the English bankruptcy law is co-extensive as to territorial operation with the English statute of limitations. The bankrupt act of the United States operates in all the states as well as in New York. Under these circumstances I think," he says, "that a debt to be barred by limitation so as not to be provable under the bankrupt act as not being due and payable, must be shown to be barred throughout the United States." Referring to the statute of limitations of New York as applicable to simple contracts, and which is identical in language with the Wisconsin statute, Judge Blatchford holds it to be a statute affecting the remedy only and not the contract, and says it could never be "invoked as a bar to an action in another state" on the contract. He says further in his opinion that "a complaint setting out a cause of action which appears to have accrued more than six years before the action was commenced, is not objectionable on its face or open to a demurrer. The defence of the limitation must be set up by answer. If it is not so set up, it is waived."

Recognizing the distinction between a law which extinguishes the contract as the result of limitation, and a law which simply limits the time within which an action may be commenced upon the contract, and holding that a law of the latter character can not be invoked as a bar to an action on it in another country, he

construes the statute of New York as not barring the debt, and as not affecting the contract, but as merely reaching to the remedy, and so concluding that a debt is provable in bankruptcy, unless barred throughout the United States.

Thus it will be seen from these decisions, that the question turns upon the point as to whether the effect of the statute is to destroy the coutract and extinguish the liability, or merely to affect the remedy on the contract. Without considering the distinction taken by Judge Blatchford on the English decisions, upon which he concludes that a debt must be barred througout the United States, so as to make it a debt not provable under the bankrupt act, it is sufficient to say, that the courts of this state place upon the statute of limitations a construction radically different from that given by Judge Blatchford. To illustrate,—although the statute of Wisconsin, like the statute in New York, requires that the defence of the statute of limitations must be set up by answer, the supreme court of this state have held, that where it appears upon the face of the complaint, that the plaintiff's claim is barred by the statute, the objection may be taken by demurrer, and that in such case the demurrer is an answer within the meaning of the statute. Howell v. Howell, 15 Wis. 55. See also New Jersey v. New York, 6 Peters, 323.

Further, the supreme court of this state have held in Brown v. Parker, 28 Wis. 22, that the lapse of time fixed by the statute of limitations of this state as to parties residing therein, does not merely affect the remedy, but extinguishes the right, and that this applies to contract debts as well as to the title to property. This is a very strong case, and one in which Justice Dixon elaborately reviews the law on the question, holding that under the statute the debt by lapse of time becomes a nullity, and as if no debt or promise had ever existed. The result of this decision upon the facts of the case, was, that where a note made in this state and of which the maker and holder were residents, had been barred and the debt thus extinguished (by the law of this state as interpreted by its courts), and the note was then sued upon in a court of Illinois, the defence upon the *lex loci contractus*, if set up there would have been good, and a judgment upon such note entered in Illinois by confession upon warrant of attorney, was relieved against. The principle that, as to parties residing in this state, the statute of limitations does not affect the remedy only, but directly extinguishes the right after the statutory period has elapsed, was also settled in this state in Sprecker v. Wakely, 11 Wis. 432, and Knox v. Cleveland, 13 Wis 245. Now it is a settled principle, that the *lex fori* must prevail as to statutes of limitation. "The federal courts sitting within the respective states, regard their statutes of limitation and give them the interpretation and effect which they receive in the courts of the state." *In re* Cornwall, 6 N. B. R. 318; Shelby v. Grey, 11 Wheat. 361; McCluny v. Silliman, 3 Peters, 270; Green v. Neal's Lessee, 6 id. 291; Ross v. Duval, 13 id. 45. Giving to the statute of limitations of this state the interpretation placed upon it by the courts of the state, I must hold that, as the parties are residents of this state, the demands in question being barred by the statute, are extinguished, and are therefore not provable claims against the estate of the bankrupt. They are as if they had never existed.

The views I have expressed are, I think, sustained by Judge Woodruff, in *Re* Cornwall, 6 N. B. R. 305.

Selections.

MUNICIPAL AND INTERNATIONAL LAW.—On Monday Lord Penzance called the attention of the House of Lords to a passage in the much-discussed German despatch to the Belgian government. The German minister writes: "These are incontestable principles of international law, that a state ought not to permit its subjects to disturb the internal peace of another state, and is bound to take care that it is in a position to fulfil this international obligation." The noble and learned lord said that he believed the principle was "novel, erroneous, mischievous, and likely to become dangerous," and his lordship protested against the apparently assumed right of foreign interference in the home rule of a sovereign state. In the course of his reply the noble foreign secretary made some observations which seem to us to call for comment, because they are capable of a construction that is inconsistent with certain recognized principles of public law. We do not mean for an instant to assume that Lord Derby would, if he were consulted, admit such a construction; but then his lordship will not be able to prevent the Germans from construing his utterances in a way that is most agreeable to them. Lord Derby said: "If I rightly understand the doctrine laid down by the noble lord, there is one part of it to which I should hesitate before giving an unqualified assent. The noble lord seemed to lay it down as an abstract and general proposition—and I did not understand him to admit exceptions to it—that each state is necessarily supreme in the making of its own municipal law, and that no other state has a right to call upon it to make alterations in that law. That doctrine, no doubt, represents the general rule; but, if laid down unconditionally, it seems to me open to criticism, because it shuts you up to the conclusion that every state must be the sole judge for itself, what its international duties are. Now, that is equivalent to saying that there are, or soon will be, as many different systems of international law as there are independent states; and that, again, is very much like saying that there is no such thing as international law at all. It seems to me, speaking with great deference, that if a state lies under recognized international obligations towards another state, it is no answer to a charge of non-fulfilment of those duties, that they were not fulfilled because municipal law did not allow of their fulfilment. The state aggrieved might surely reply to that plea, 'What is that to us? If your law is defective, you can mend it; but the badness of your municipal legislation does not lessen our rights or our claims as against you.' Once admit that no nation can be called upon to amend internal laws, however defective, by any other nation, and you put an end to all international compacts. For on that hypothesis a state, wishing to free itself from an inconvenient obligation to another state, has nothing to do except to alter its own laws in such a manner as to make the fulfilment of that obligation impossible, and then, according to the theory, the obligation itself ceases. Surely that is very like saying that no state is ever to be bound to anything; and then what are treaties worth?"

A state is either sovereign or dependent, and if it is sovereign, it is absolute within its domain—that is to say, it can maintain or make any laws it pleases without consulting any other government, in other words, no government has any lawful cognizance of the municipal laws of an independent foreign state. If we have correctly stated the nature and privilege of sovereignty, then the *dictum* attributed by Lord Derby to Lord Penzance, is correct, *id est*, "that each state is necessarily supreme in the making of its own municipal law; and that no other state has a right to call upon it to make alterations in that law." But we altogether deny the conclusion that Lord Derby derives from the proposition. The supreme right of a state to make its own municipal law, does not confer upon that state the right to "be the sole judge for itself what its international duties are." The sovereigni right is distinct from the international obligation. No doubt that practically there is some relation between municipal and international law. A state can not readily fulfil its international obligations if its municipal law is not framed to prevent the violation of these international obligations. But that, we submit, does not involve the right of oreign interference with the municipal law of a sovereign state. We agree with Lord Derby, that it would be no answer to the charge of non-fulfilment of international duties, to say that the municipal law did not admit of their fulfilment. Why should not that be a valid answer? Because those international duties are not subject to the provisions of the municipal law, but are absolute obligations, whether they do or do not accord with the municipal

law. The aggrieved state has a right to demand the fulfilment of international duty, without regard to the municipal law of the offending state, but it has no right to ask for an alteration of the municipal law. It must leave to the sovereign state to adopt what means it pleases for the fulfilment of its international duties. We repeat that it is desirable and even necessary for the municipal law to provide for the due enforcement of international obligations, but it is not the right of the foreign government to dictate what municipal legislation or means shall be adopted to ensure the fulfilment and to prevent the violation of international obligations. It is, we conceive, of the utmost importance to assert the principle, that a sovereign state is necessarily and without exception supreme in the making of its own laws, and that no other state has a right to call upon it to make alterations in that law. Otherwise there would be a loophole for intervention in domestic affairs by a foreign state. For instance, a state might insist upon an alteration of the municipal law of another state, to prevent an assumed danger of a breach of international duty. As the law now stands, there is no excuse for such an interference. The government is responsible to the foreign governments for the fulfilment of its international obligations; but what means are adopted to fulfil them is no lawful concern of any other government.—[*The Law Journal.*

THE EXERCISE OF THE PARDONING POWER.—In Massachusetts there is annually published, along with the laws of the year, commonly called the "Blue Book," a statement made by the Governor to the legislature of the pardons granted during the year past, and the reasons for granting them. The "Blue Book for 1875" has lately appeared, and an examination of the reasons assigned for the eighty-seven pardons granted during 1874 suggests some criticism which may be interesting to our readers. When a man is accused of crime, it is for a jury to say upon their oaths whether the witnesses against him deserve belief, whether their evidence, if believed, proves that he did the act charged, and whether he did it while of sound mind and responsible for his actions. It is then the duty of the presiding judge to impose sentence, in which the law often gives him a discretion, according to the aggravation of the offence as proved before him. If there have been any irregularities in the proceedings, the sentence can be reversed by a court of appeal. In each of these stages every precaution is taken to secure a just and correct result, and that result, when reached, ought, in the absence of fraud, to be final. How is it in fact? The governor and council of Massachusetts, it seems, feel authorized to review the evidence and find a new verdict of their own, which releases the prisoner. Thus, in case 14 of the list just cited, a pardon was granted because "the prisoner was evidently insane when the assualt was committed" (a point of which the jury were clearly the best judges); and in case 50, because the "council felt there was reason to believe" that the witnesses for the prosecution were perjured. In other words, they presumed guilt to exist in several persons who had never been convicted, in order to be able to presume innocence in one who had been convicted. Again the pardoning body is in the habit of thinking that judges abuse their discretion in the matter of sentences. In more than a dozen cases the sentence was remitted because it "seemed too severe" (as in case 29), or because the prisoner, having served part of it, was "regarded as sufficiently punished" (as in case 40). If the judges do really err on the side of long sentences, it may be accounted for by the fact that the term is very likely to be curtailed, while it cannot be extended, by a superior power. Further, the pardoning body takes upon itself to reverse a judgment, as a court of appeal might do, if they think there is a legal error in the proceedings. In case 5 pardon was granted because of "illegality of sentence. The property stolen was less than $100 in value, and the prisoner could not be legally sentenced for more than one year." In these cases pardons were granted for reasons which might legally have availed the prisoner if they had been alleged before the proper tribunal at the proper time, and then made to appear true. But the prisoner failing to satisfy the jury that he was insane, or the judge that the punishment was unduly severe, had still a chance left with the governor's council. In other cases the reasons alleged are no reasons at all, and could have had no possible influence with any tribunal bound to respect the law and the facts, but seem to have had their effect on a tender-hearted governor and council. Thus, in at least twelve cases, pardon was thought proper because when the offence was committed the prisoner was intoxicated (cases 13, 52, 53, and others). This novel and startling doctrine, that drunkenness excuses crime, is applied more especially to extenuate the crime of rape (cases 81, 62, 70) Let any one imagine the result of this new principle of the criminal law, should it become generally known to the vagrants who now infest the country. Another rule of the law of pardon seems to be that when two are jointly convicted, and one is pardoned, it is but fair that the other should be let loose also. This reasoning appears to have had force in cases 38 and 83. Neither can the governor bear the piteous sight of the parting of twin criminals convicted of the same offence. "Case 47.—Prisoner's sentence was longer than that of his brother, who was to be released Sept. 1. Prisoner was pardoned on the same day, in order that the twin brothers, who had never been separated, might leave prison together." With this conclusive reason for clemency to a thief we leave the Massachusetts Blue Book, though its treasures are far from exhausted.—[*The Nation.*

THE FUNCTIONS OF JURORS.—Some jurymen, certainly, judging by recent incidents, appear to entertain rather hazy conceptions as to their proper functions. During the trial of Rev. R. O'Keeffe v. Very Rev. Dr. M'Donald, at the Wicklow Assizes, the plaintiff was cross-examining a witness on matters of canonical law, when one of the jurors intervened, and asked Baron Dowse whether his lordship would permit the plaintiff to be putting questions which had no bearing on the case. The learned judge, with pathetic meekness, replied that he was doing his best to keep Father O'Keeffe within legitimate bounds, but that the plaintiff, being his own counsel, should be allowed considerable latitude. The juror was by no means prepared to approve of this dogma, and retorted that jurors had rights and privileges as well as the parties in the case. "True," said Baron Dowse, "but one of the privileges of a judge is not to be criticised by a juror." The duel had now assumed a triangular aspect. Indeed, there was no knowing how the conflict of privileges would be terminated, unless by some oracular judgment like Sir John Finett's, on the solemn question "which was the upper end of the table;" that "in spite of the chimneys in England, where the best man sits is that end of the table." But, fortunately, another juror interposed with a compliment to his lordship on the patience with which he was hearing the case; and the episode concluded by the learned judge stating, *obiter*, that it was the first time he had ever been accused of being over-patient, and he was really surprise at it himself.

Some English jurymen seem to hold notions no less nebulous as to the boundaries of the jury-box, and occasionally overstep the limits allowed to them by law. In the case of Smith v. Sorby, which has just been heard on the Midland Circuit, the plaintiff having deposed that it is an universal practice with all waggon companies to allow a commission to agents of £1 per waggon, a zealous juror cried out, "My Lord, if you will swear me, I will swear that is not true." "You cannot give evidence; you must only listen to it," answered Mr. Justice Lindley. Might, then, this particular juror allow his own knowledge to sway him in finding a verdict? By no means. His oath is that he shall find a true verdict "according to the evidence," not according to right or according to justice; and a verdict contrary to the evidence produced in court, though consonant with right or abstract justice, could not stand. Where it otherwise, indeed, we should have a resuscitation of the inconveniences attendant on the ancient provision that

jurors should be "next neighbors," who were supposed always to have evidence in their own breasts. Another English juror—the foreman of the jury which recently convicted a German sailor of murder for stabbing the mate of his ship—writes to the newspaper to express his regret and surprise at the announcement, that the capital sentence is to be carried into effect. He has written, he says, to the home secretary, praying for a mitigation of the sentence, on the ground that the jury thought the case "nearly allied to one of manslaughter," but ultimately decided that it was murder. By having accompanied their verdict with "a strong and unanimous recommendation to mercy," they thought, the foreman says, they "should be strictly carrying out the law, and, at the same time, almost insuring the remission of the capital sentence." Whatever be the true sense of the words of the juror's oath, in criminal cases, that he will "well and truly try the prisoner at the bar, and a true deliverance make"—whether "deliverance" is to be construed as meaning a deliverance of *opinion*, or be taken as a corruption of *deliberation*, and so mean a true deliberation make—the jurors must, at all events, in such cases remember that their office is merely to decide whether certain facts alleged by the prosecution were proven. If they considered that the provocation in the case referred to was excessive, it was open for them to have brought in a verdict of manslaughter, but the foreman, who says that by finding the prisoner guilty of murder they were "strictly carrying out the law," evidently does not consider that "manslaughter" would have been a proper description of the crime. The verdict of "murder" being once brought in, the jury had no further concern with the matter. Of course any representations addressed to the minister who disposes of the mercy of the crown would receive due attention; but it is impossible to admit the pretension that any recommendation of a jury should be binding upon the discretion of the home secretary. The pretensions of this jury amount virtually to a demand to be allowed to qualify their verdict with the "extenuating circumstances" admitted by the French law, but which the experience of France does not encourage us to adopt. The legislature of California has proceeded even further, by passing a law giving juries power, where a prisoner is convicted of murder in the first degree, of commuting the punishment to imprisonment for life. Unless the necessity be urgent or the utility evident, we should be slow to admit of any innovation in trial by jury, which the author of "Eunomus" well pronounced "the noblest form of policy that was ever invented on earth, and (may I add?) comes nearest the impartiality of Heaven."—[*The Irish Law Times.*

Correspondence.

IMPEACHMENT OF WITNESSES.

ST. LOUIS, Aug. 25, 1875.

EDITORS CENTRAL LAW JOURNAL:—Your "comments," *ante*, p. 527), seem to entitle me to a reply, which may, however, be made quite briefly. Acknowledging that a carelessness of expression may have given you some excuse for your strictures as to *the language* commonly used by courts in instructing juries; as to evidence of the *reputation* rather than the *habits* of witnesses, usually admitted for purposes of impeachment; and as to the several *forms of oath* in use; permit me to say, with all due deference, that you seem to have entirely overlooked the real question. The "premises" upon which my suggestions were based, do not consist of these minor details, but of the broad, palpable and well-known fact, that oaths in various forms are daily administered in courts of justice to persons who demonstrate, beyond the possibility of a doubt, that they have, as was said in my former communication, so little comprehension of, and regard for the solemn nature, sanctity and binding force of an oath, that they make it their daily habit to deride and take in vain the name of that God to whom they thus so solemnly appeal; and spend their lives in utter disregard, and open defiance of the very principles by which they are supposed to be governed in taking the oath. This, then, is the gist of the matter, and my question, why should not such rules be adopted with respect to the testimony of such persons, as exist concerning infants, imbeciles and notorious liars? remains as yet unanswered. "The rule which excludes evidence of the moral character and habits of witnesses," if there be such a rule, is not involved at all. Indeed, the defect which it was attempted to point out consists of the fact that the existing rules of evidence do not in any respect reach the question.

The "habits" of a witness, it may be said, however, are directly the subject of investigation, virtually, in all cases where his "reputation for truth and veracity" is enquired into. It is not contended that the "moral character and habits of *every* witness" should be "made the subject of public investigation," any more than the "reputation for truth and veracity" of *every* witness is now put in question; but only that habits of open profanity, or, if you please, "the general reputation" of the witness in this respect, should be made as much a subject of enquiry for the purpose of impeaching testimony, in the same manner and to the same extent, as are habits of lying, or the "general reputation for truth and veracity." Such an enlargement of the rules of evidence could scarcely meet with more objection from "men of delicate sensibilities" than the rule as to "reputation for truth and veracity," unless the number of men possessing "delicate sensibilities" is much larger among those addicted to profane swearing, than among those whose "reputation for truth and veracity" is called in question, which it is to be hoped is not the case.

Finally, it is *because* so little attention is paid to the question whether habitual profanity is more or less *dangerous to the truth of testimony* than habitual lying, that the suggestion of the necessity of changes in the rules of evidence was offered. If a test of the truth and value of evidence is permitted as to habitual lying, why should it not be permitted as to habitual swearing? Which is the most calculated to endanger the truth of evidence? These, as has been said, are questions which remain unanswered. C.

COMMENTS.—If there is any necessary connection between *swearing* and *lying*, there would seem to be sense in what our correspondent says. But it is believed that, except in the opinion of religious zealots, there is no such connection. Experience proves that a great many thoroughly profane men are thoroughly truthful; and this of itself shows that the rule for which "C" contends would be without safety as a test of credibility. Lying, stealing, receiving stolen goods, obtaining goods under false pretences, counterfeiting and cheating, all belong to the same family of crimes. The essential element of each one is falsehood; and there would seem to be some sense (if it were not for the inconvenience of trying each witness without an indictment against him), in proving that a witness is a thief or a counterfeiter, in order to diminish the value of his testimony; because a thief or a counterfeiter is necessarily a liar. But there would seem to be no more sense in proving that a man is a blasphemer, in order to impeach his testimony, than there would be in proving that a woman is a prostitute for the same purpose; and that the latter can not be done, was held by the Supreme Court of Kansas in Craft v. the State, 3 Kansas, 480, in which case the learned court, by Crozier, Ch. J., said:

"Again, it is said that if the jury were convinced from the evidence that she was a common prostitute, they were bound, as a matter of law, to reject her testimony; *i. e.*, the law presumes that when a woman loses her virtue she will not tell the truth. This would be a very harsh rule, unsupported by authority except in one state of the union, and entirely indefensible by any process of reasoning that this court can conceive of. A woman's chastity should be the 'immediate jewel of her soul,' and with reference to consequences to herself, the very last virtue she would be willing to surrender; but when it is considered that she is regarded as the weaker vessel, that she is of a softer nature, of a

more yielding disposition, and more vulnerable through the affections than we are, it ought not to be said, when, in the warmth of sexual excitement and in the glow of natural passion, produced by the soft whisperings, the fervid protestations, the gentle pressures and other kindred blandishments, which may be imagined, she submits to the embraces of her lascivious lover, that she pours out from her heart at Venus' shrine, with her virtue, every other good quality with which, in our thoughts, we endow her sex. Yet the position assumed must come to that. If, as a matter of law, her testimony must be rejected when her virtue is lost, the principle will be the same whether she habitually flaunts her frailty in the face of the world, or attempts to hide it in retiracy, or garnish it with garlands of good works."

Other authorities might be cited to the same general view; but the reasoning of this case is deemed conclusive.—[ED. C. L. J.

Recent Reports.

REPORTS OF CASES IN LAW EQUITY, DETERMINED IN THE SUPREME JUDICIAL COURT OF MAINE. By EDWIN B. SMITH, Reporter to the State. Volume 63. Portland: Dresser, McLellan & Co. 1875. pp 599 and index Number of cases reported, 156.

The excellent paper and binding, wide and full pages, and careful arrangement, make this a very handsome and attractive volume. The substance of the syllabus of nearly every case is stated in an Italic head-line—a feature to which we are exceedingly partial, and which we hope to see all the reporters adopt.

Deceit—Misrepresentations in Sale of Patent Rights.—Bishop v. Small, p. 12. Opinion by Peters, J. An action of deceit will not lie upon false representations either as to what a patent right cost the vendor; or was sold for by him; or as to offers made for it; or profits which could be derived from it; or for any mere expressions of opinion of any kind about the property sold.

Bank Check—Withdrawal of Deposit before Payment.—Emery v. Hobson, p. 32. On exceptions. A check is an appropriation *pro tanto* of the maker's funds in the bank. If the maker has withdrawn his deposit before payment, no presentment was essential, and he suffered nothing by delay in presentment. He was bound to keep funds in the bank for its payment. Testimony as to the purpose of the parties was immaterial.

Railroad—Lessor of a Railroad not Liable for its Management while Leased.—Mahoney v. Atlantic and St. Lawrence R. R., p. 68. Opinion by Dickerson, J.; Walton, Barrows and Virgin, JJ., not concurring. Trespass for an assault upon the plaintiff, and expelling him from a train running over defendant's road. The road was operated by the Grand Trunk Railway Co., under lease from the defendant. *Held*, that the defendant was not liable, in the absence of any provision making them so in their charter or any statute. But Bean v. A. & St. L. R. R., where fire was communicated from an engine of the Grand Trunk Company, lessees, to property along side of the track, the defendant company was held liable, the statute authorizing the lease expressly providing that no liability imposed by any general law shall be removed from the lessor company and imposed upon the lessee.

Promissory Note—Statute of Limitations.—Merrill v. Merrill, p. 78. Rescript by Danforth, J. An action for money had and received, sustained by a valid promissory note, signed in the presence of an attending witness, is an action upon such note, within the meaning of the statute, and may be maintained within the same period of limitation as if the note had been specifically declared upon.

Appleton, C. J., Cutting, Barrows and Peters, JJ., concurred. Dickerson, J., in an able opinion, *contra*. *Held*, that the statute of limitations, which provides that all actions of assumpsit shall be commenced within six years from the time the cause of action accrued, and not afterwards; and also that such provision shall not apply "to actions brought upon promissory notes when signed in the presence of an attending witness," was not satisfied by the bringing of the present suit. Virgin, J., concurred.

Usage—Inoperative if Contrary to Law, or Repugnant to the Contract sought to be Varied by it.—Randall v. Smith, p. 105. Dickerson, J., delivered the opinion On exceptions by plaintiffs to instructions of the justice of the supreme court. A usage, to affect a contract proved, must not be contrary to law, or repugnant to the contract which is sought to be varied by it. The court below instructed the jury that a usage between coal-dealers and ship-masters, that contracts to load vessels with coal were generally treated as binding only as the convenience of either party, being proved, they should hold such a contract to have been made with reference to it. The court sustained exceptions thereto.

Bailment—Relinquishment of Possession by Bailee—Waiver of Lien.—Robinson v. Larraba, p. 116. On exceptions. Opinion by Dickerson, J. The voluntary relinquishment by a bailee of the possession of the subject of bailment, discharges his lien for services, etc., concerning it, unless it is consistent with the contract of bailment, the course of business, or the intention of the parties, that it should continue. The presumption is that when he parts with the possession, he abandons his lien, unless his conduct in so doing is explained. Such forfeiture once incurred is not in turn waived by a subsequent possession of the subject by the bailee, unless such is the intention of the parties.

Promissory Note—Estoppel.—South Boston Iron Co. v. Brown, p. 137. Opinion by Barrows, J. Brown made his promissory note, for partial payment of a piece of work to be done for him by the Irving Bark Extract Co., payable, at the request of the last named company, to the plaintiff company, to which it was indebted, but with which Brown had no dealings. The Irving, etc., Co., failed to perform the work, and Brown pleaded failure of consideration, when sued by the plaintiff company, on the note. *Held*, that he was estopped from so doing.

Admiralty Law-Bill of Lading—Evidence—Secondary, when Admissible.—Dyer v. Fredericks, p. 173. Opinion by Barrows, J., printed at page 594. Rescript: Where the plaintiff offers parol evidence of the contents of a bill of lading upon which he relies, originally executed in duplicity, the burden is upon him to show that neither of the parts can be produced. If the parol testimony which he offers is received, the presumption is that he has satisfied the court of this; and when there is no ground for suspicion that either part is in the possession or under the control of the defendant, that presumption in not overcome by the naked fact that the defendant, a master of a vessel, testifies that one of the parts was once in his possession, and was delivered by him to one of the owners of the vessel at the end of the voyage ten years previous to the trial. If the plaintiff believes that there is a reasonable probability that the ship's bill thus referred to can be produced, it is his duty to move the court for leave to summon the owner to produce it. If he does not do this, the burden being upon him to account for the non production of other of the bills, he can not object to the defendant's use of parol testimony to rebut the same kind of evidence adduced by himself.

Master and Servant—Liability for Misconduct.—Grand Trunk Railway Co. v. Nathan, Admr., p. 177. On exceptions. Opinion by Appleton, Ch. J. A servant is liable to an action at the suit of his master, when a third person has brought an action and recovered damages against the master, for injuries sustained in consequence of the servant's negligence or misconduct. The servant is liable for costs and counsel fees in such suit, incurred in the defence, he having been notified of its pendency, and having requested his master to defend.

Carrier's Lien—Car Missent over Wrong Road.—Jones v. Boston & Albany R. R., p. 188. The plaintiff contracted with the Red Line Transit Co., composed of several railway companies, including the defendant company, to transport a quantity of corn from Delavan, O., to East Boston, Mass. The corn was intended for Springvale, Me., but by mistake of the shipper, or the clerk at Toledo, O., was billed to Springvale, N. H.

At Toledo, the word "Springfield" was substituted for "Springvale." On arrival at East Boston, one car load was detached and went to Andover, N. H., but was sent back to East Boston over the defendant road, when it was claimed by the plaintiff, with tender of charges from Delavan to East Boston. *Held*, that he was entitled to recover the value in trover against the defendant company.

Evidence—Samp es of Liquor in the Jury Room.—State v. McCafferty, p. 223. Whether hop beer is, or is not intoxicating, is a question of fact for the jury. The jury having been allowed to take with them to their room a bottle containing a liquid called ale, which, *though no part of the liquors seized*, was manufactured and sold by the same person, under the same name, it was *held*, that there was no legal obligation to this course, the jury having been instructed not to consider the qualities of the contents of the bottle, unless satisfied from the evidence that its character was the same as that of the liquor seized. [It to be hoped that this may not be looked upon as a precedent, by the courts which may be called upon to try the "crooked whiskey" cases, now so numerous]

Railroad—Power of the Railroad Commissioners to Require the Erection of Depot at a Designated Place.—R. R. Commissioners v. Portland & Oxford Central R. R. Co., p. 269. Dickerson, J., delivered the opinion of the court. Railroads are public highways, and are to be conducted in furtherance of the public objects of their creation. The courts, and not the board of directors of a railroad company, are to determine finally the man-

ner in which the company shall discharge the public duties imposed upon it by law. Mandamus lies to compel the performance of such duties. The law empowering the state railroad commissioners to designate places where depots shall be erected and maintained for accommodation of the public, is constitutional, and not inconsistent with the charter of the defendant company.

Railroad—Liability for Representations of Ticket Agent.—Burnham v. Grand Trunk Railway Co., p. 298. Opinion by Danforth, J. The defendant's ticket agent represented to plaintiff that it was necessary to purchase but one ticket to enable him to pass over the road, stopping over one night at any intermediate station, and that the conductor would give a "stop-over check," to enable him to do so. At the time these representations were made, and in consequence of them, the plaintiff having informed the agent of his desire to stop over, purchased his ticket, paying the fare demanded for the whole distance.

On the second day, his ticket was refused by the conductor, upon the ground that it was endorsed "good for this day only," and the plaintiff, refusing to pay the fare demanded, was expelled from the cars. *Held*, that in an action against the company, such representations of the ticket agent were admissible in evidence; and that the conductor, having been informed of these representations, was not authorized to expel the plaintiff from the train without first offering to return the excess of fare paid, or to deduct it from the fare demanded, though the rules of the company probibited passengers from stopping over upon such tickets.

Gift—Delivery—Savings Bank Pass-book.—Hill v. Stevenson, Admr., p. 364. Opinion by Appleton, C. J. A delivery to a donee of a savings bank book, with intent to give the donee the deposits represented thereby, is a good delivery, and vests an equitable title to such deposits in the donee without an assignment, though by the rules of the bank the moneys can only be withdrawn or transferred by the depositor or his administrator, or by some person presenting the book accompanied by an order, signed by the depositor in the presence of an attesting witness.

The rights of the plaintiff were not concluded by a judgment obtained against the administrator for not inventorying such deposit as assets; and although the same were afterwards so inventoried, such judgment was no basis to this action.

Flowage of Lands by Mill-dam.—Butler v. Huse, p. 447. Virgin, J. delivered the opinion of the court. Complaint for flowage of plaintiff's meadows by the defendant's dam, between the middle of May and the first of September, since 1867, at which time the dam was repaired and rebuilt. A complaint for flowage cannot be sustained if either of several respondents had the right to flow the complainant's premises, in the manner and to the extent stated in the complaint. The conveyance of a dam and mills, by necessary inplication, carries with it the right to flow the grantor's land then flowed by such dam, and which must inevitably be flowed by a fair and proper use of the dam and mills. The owners of the dam had the right to maintain the same, as it was when it was deeded to them; and if through want of repair, through a series of years subsequent to that, it lets the water escape, the owners have the right to repair and tighten it, although the water is thereby raised higher, and retained longer than while the dam was unrepaired. [See Field v. Brown, 24 Grattan, 74, noted *ante*, p. 500].

Bank Dividend—Lien of Bank on same.—Hagar v. Union National Bank, p. 509 Virgin, J., delivered the opinion of the court. A bank has the right to hold a cash dividend as pledged for the indebtedness of the shareholders to the bank.

Sunday Contract—Void although Completed on Week-day.—Plaisted v. Palmer, p. 576. Opinion by Peters, J. The defendant sold a horse to the plaintiff, on Sunday; the plaintiff gave his bank check for the price of the horse, on the same day; the defendant at the same time deposited a bill of sale of the horse with a third person, to be delivered to the plaintiff when the check was paid; the check was paid on the horse, and bill of sale was delivered on a subsequent week day: *Held*, that an action of assumpsit to recover back the price of the horse, on account of a deceit practiced in the sale, would not lie, because based on a transaction tainted with illegality.

C. A. C.

Briefs.*

Continued Adverse Possession.—In the Supreme Court of Indiana, Brown v. Preston *et al.* Additional brief for appellee; pp. 10. This is another brief in support of acquiring title by continuous adverse possession, the principles of which are now well settled. [Address Iglehart & Iglehart, Evansville, Ind.]

Opening Bidding for an Advance.—In the Supreme Court of West Virginia, Kable v. Mitchell. Argument for appellant, pp. 27. The court had ordered the sale of certain lands, which the commissioners afterwads sold and reported accordingly. Subsequently a motion was made to re-open the sale to admit an advance bid, and it was so ordered; from which decree plaintiff appeals. The argument involves a discussion of the English practice of opening biddings, and aims to show that such should not prevail here, (a) because it is unsuited to our judicial system and social economy; (b) because it can not be adopted to our *term* system; (c) because certain differences between the English and American methods of transacting judicial business absolutely preclude its adaption; and (d) because all American decisions proceed upon grounds irreconcilable with that practice. [Address, J. M Mason, Charlestown, W. Va.]

Tax on Property leased by the State Taxing.—In the Supreme, Court of Georgia, The Western and Atlantic R. R. Co. v. The State of Georgia. Brief for plaintiff, pp. 10. Plaintiff holds certain property leased to it by defendant, which property defendant seeks to tax. Plaintiff objects upon the one genral principle that the owner of property is the one legally bound to pay taxes thereon, unless the lease otherwise provides. There is an able discussion of the peculiar relations growing out of the above state of affairs. [Address, Julus L. Brown, Atlanta, Ga.]

Negligence of Fellow Servants.—In the Supreme Court of Missouri. Phebe Conner, Respondent, v. C. R. I. & P. R. R., Appellant. Brief for appellant, pp. 30. Plaintiff brought this action to recover the statutory damages for the death of her husband. The first clause of the second section of the damage act is carefully considered. The argument is based upon this distinction, that, though railroad companies act through their agents, and are responsible to subordinate employees for the negligence of the superior or managing servants, the reverse is not true, but, on the contrary, companies are not responsible for damages done to one employed by another in an equal or inferior position. This case was published in the CENTRAL LAW JOURNAL for March 25th. [Address, M. A. Low, Gallatin, Mo.]

Patent Law—Perforated Well-Tubes.—In the United States Circuit Court, District of Kansas, Craig v. Smith and Hale. Defendants' petition and exhibits. pp. 53; and argument, pp. 9. Plaintiff sought to restrain defendants from selling certain well-tubes. Defendants claim right to sell, on the ground that the peculiarities of this particular tube, were known and used prior to the date of plaintiff's invention. Valuable list of cases cited. [Address, John Guthrie, Topeka, Kan.

Libel against Jury and Verdict.—In the Supreme Court of Colorado. Byers, Appellant, v. Martin, Appellee. Brief for appellant. pp. 8. This action was brought because of an alleged libel directed against a jury and its verdict, and not against any individual members of said jury. Under the criminal code, by way of indictment, it is admitted, the charge might be sustained for libelling a *body* of individuals; but, in proceeding by way of civil remedy, the libel must have been directed against one or more individuals, *as such*; because the action can only be maintained upon the ground that the individual libelled has *sustained damage*. The following points are made: 1. The publication was directed against the jury and its verdict. 2. A verdict is the unanimous decision of a jury. 3. A jury is a *body* of men. 4. A verdict of itself, having no rights and owing no duties, is incapable of being libelled. 5. Action on the case will not lie for libelling a body of men. [Address, France & Rogers, Denver, Colorado.]

Negligence—Damages.—In the Supreme Court of Missouri. Lewis, Appellant v. St. L. and I. M. R. R. Co., Appellee. Appellant's brief, pp. 17. Plaintiff claimed to have lost his leg through the negligence of the railroad company, and gained judgment in the court below. He has since died. The brief discusses the question of negligence, the instructions, and the effect of plaintiff's death upon the judgment and appeal. [Address, E. W. Pattison St. Louis, Mo.]

Fixtures.—In the Supreme Court of Iowa. The Ottumwa Woolen Mills Co. Appellee, v. Hawley *et al.*, Appellants. Abstract for appellants, pp. 76. This pamphlet is devoted to the petition, answer, and evidence in the case, and is valuable to one having any interest in a matter involving the question of fixtures. [Address, H. B. Hendershott, Esq., Ottumwa, Iowa.]

*These abstracts of briefs, which have been in our possession for some time, were prepared by James Hayward, Esq., of Boston, Mass.

—THE Solicitor's Journal says, that in passing sentence of penal servitude for life on a man found guilty at Maidstone, on Thursday last, of assault with intent to murder, Mr. Justice Brett said that a dark cloud of crime sometimes passed over a country, and in this country at the present time crime seemed to take the form of brutal deadly violence, first to men and now even to defenceless women. But if juries were firm in discharging their duty, and judges were firm—as he believed they meant to be—in administering the law, it would be found strong enough to repress these outrages, and there could be no need of any alteration of the law.

Book Notices.

REPORTS OF THE LIFE AND ACCIDENT INSURANCE CASES DETERMINED IN THE COURTS OF AMERICA, ENGLAND, IRELAND, SCOTLAND AND CANADA, down to January, 1875. With notes and references. By MELVILLE M. BIGELOW, of the Boston Bar. New York: Published by Hurd and Houghton. Cambridge: The Riverside Press. 1875.

Special reports of cases in selected branches of the law, like Mr. Bennett's and Mr. Bigelow's on insurance, have established an undisputed claim upon the attention of students in those specialties, and have proven of great value to the profession at large. Among the multitudes of new law books, staggering us with the rapidity of their multiplication, we must still find ample room, and a ready welcome in our libraries for the volumes now familiarly cited as "Big. Ins. Cas."

The mechanical execution of this volume is in the best style issued from the Riverside Press; a compact, well dressed volume, presenting 698 pages of reports, closely printed and yet most clear and legible. It is sufficient to say of the volumes of this series that in outward dress they are model law books, a sight of which awakes the wish that every publisher would aim at the same high standard of mechanical excellence.

Approving most cordially of the plan adopted by Mr. Bigelow, but somewhat surprised that he has presented us so quickly with a successor to his third volume, we have subjected it to such an examination as we thought it should receive from a friendly critic.

Mr. Bigelow's fourth volume has fewer pages than any of its predecessors and exhibits some evidences of deterioration in the quality as well as the quantity of his work. His first and second volumes contained frequent and valuable editorial notes. In the present volume he has bestowed this labor upon only nine cases. We can assure him that his annotations are always acceptable to the practitioner, even though the conclusions, of the editor may not always be concurred in.

Ashton v. Burbank, p. 149, treats only of the rights of stock subscribers in a corporation. Railway Passengers' Assurance Co. v. Warner, p. 254, holds merely that the declarations of conspirators are not competent evidence against their confederates. Dunn v. Commonwealth Life Ins. Co., p. 394, decides, on a motion, that irrelevant and insufficient matter will be stricken out of a pleading. Though these cases occupy but small space, they are blemishes in a book of "Life and Accident Insurance Cases," and indicate retrogression from the high ground which the editor occupied, when in the preface to his first volume he announced that "all matters not relating to insurance are omitted." Life Ins. Co. v. Sedgwick, p. 129, upon the rights and responsibilities of the sureties of an insurance agent, and Ruggles v. Chapman, p. 323, a controversy between the receiver of an insolvent company and the state superintendent of an "insurance department," over the right to the possession of the deposits made for the benefit of policy-holders, have perhaps sufficient connection with insurance to be admissible. But we would perfer to see a volume of special reports contain only cases of technical relation to its avowed subject.

In his first volume, Mr. Bigelow's plan was to arrange his cases "chronologically by states." The states being arranged alphabetically, reference by states was comparatively easy. But the practitioner who would thus examine the fourth volume, must look for reports of cases in the Supreme Court of the United States, in two separate places; for California, Kentucky, Massachusetts and Missouri cases, each in two separate places, and for Connecticut cases in three places in the book. This is not a slight matter in these days, when books are so multiplied that "catch-words" in "bold-faced type," and all sorts of helps to the attention and the memory, are resorted to by book makers, with the approval of the profession.

In the respects here referred to, we observe with regret that Mr. Bigelow has not been faithful to his own precedents. And, because we believe that he is willing and conscientiously desires to discharge in full "the debt which every lawyer owes to his profession," we venture also to suggest some points in which he may improve even upon his model.

First, it would have been a better arrangement of cases from the beginning, and it will improve Mr. Bigelow's future reports if now adopted, to follow a purely chronological order, as does Mr. Bennett in his Fire Insurance Cases.

Of the latter reports, the first volume covers the period from 1729 to 1839; the second, that from 1840 to 1848; the third, that from 1849 to 1854. Mr. Bigelow's first volume purports to contain *all* the American cases determined prior to January, 1871.

In his second volume he professedly reports the American, English *and Irish* cases determined "between January, 1871, and January, 1872," and "nearly all of the prior English cases, together with several others, overlooked in making the former collection." But this volume in fact contains only 18 American cases determined within that period, while it exhibits 26 American cases that were determined within that period assigned to volume 1, but which the editor "overlooked," four of them having been decided in 1817, 1855, 1858 and 1866, respectively; and the solitary Irish case reported in this volume was determined in 1869.

In volume 3 we are promised the American, English and Irish cases decided between January, 1872, and January, 1874, also all the Scotch and Canadian cases of general interest, "and such of the English and Irish cases as were not published in the second volume." This volume in fact contains 24 American cases of the period named (23 of which fell in 1872, and 1 in 1873), and *26* American cases decided *prior* to 1872. It also contains *two* English cases, and not a solitary Irish case, of the period named, while it exhibits *48* of those "prior English cases," beginning in 1792, which were "nearly all" to have been published in volume 2 (that volume in fact contained 52), and 11 Irish cases of prior dates, beginning in 1826, and which a better chronological arrangement would have assigned to an earlier volume.

The present volume purports to contain the cases "down to 1875." As the third purported to contain those "down to 1874," this one should contain only the cases decided during the past year. But can a profitable volume—to the practitioner we mean—be made up of one year's cases in Life and Accident Insurance? On examination, the book is found to contain 106 American cases, of which 37 were decided in 1874, and 69 were decided within the periods covered by former volumes. Of these, 3 fall in 1870, 6 in 1871, 12 in 1872 and 48 in 1873. Of the 9 English, Scotch and Irish cases (there are none from Canada), two only were decided in 1874, two in 1873, one in 1872, two in 1841, one in 1805 and one in 1760.

These facts display a total want of chronological order, or rather a prevalence of chronological confusion, running through Mr. Bigelow's four volumes. This can hardly be considered a small matter. The mere case-lawyer may rejoice in being turned loose in any of these volumes of insurance cases. But the student who would understand the principles of the science he investigates, must examine it historically and philosophically; he must trace its growth and progress chronologically; and Mr. Bennett's system has done more for him in this respect than Mr. Bigelow's. In the present growing condition of the law of life insurance, had our reporter grouped in one volume cases selected from the 35 decided in 1872, 49 in 1873, and 37 in 1874, which he has scattered through his third and fourth volumes, he would have performed an invaluable service to the profession, in furnishing them the evidences of the progress made in that branch of the law during a period of great outward growth in life insurance as a business, and in which many new and perplexing questions of law have in consequence arisen.

A few late cases of importance have been overlooked by the reporter, which should have found a place in the fourth volume. Without referring to others of less value, we may mention as cases which would have been a useful addition to this volume, (1) Mowry v. Home Ins. Co., 9 R. I. 346, on wagering policies issued to creditors; (2) Hudson v. Menifield, in which the Supreme Court of Indiana held in 1874, that in that state a wife's policy on her death before her husband's, will descend to her heirs; (3) Union Central Life Ins. Co. v. Thomas, in which the same court, in the case of a non-compliance of the insurance company with the state statutes, held the policy void, and allowed the insured to sue for, and recover premiums paid; (4) Southern Life Ins. Co. v. Booker, in the Supreme Court of Tennessee, 1873, reported in 7 W. I. R. 96—which case occupies a leading and advanced position on the points of immaterial warranties, and estoppel of the insurer by the acts of its agents; (5) Smith v. Charter Oak L. Ins. Co., in the Circuit Court at St. Louis, January, 1873, reported 1 C. L. J., 76, and Seyms v. N. Y. Life Ins. Co., in U. S. Circuit Court for Mississippi, November, 1873, whose opinions, though inferior courts, would be a useful contribution to the question of life insurance contracts as affected by the late civil war; (6) Barry v. Mut. Life Ins. Co., in the Supreme Court of New York, November, 1873, reported 3 Ins. L. J. 74, which gives one phase of Mrs. Barry's much litigated cases on the assignment of a wife's policy; (7) Garber v. Globe Mut. L. Ins. Co., in the U. S. Circuit Court for Missouri, 1874, reported 8 West. Ins. Rev. 94, in which Judge Dillon instructs a jury upon the law of waiver as to residence within prohibited lines, and as to delays allowed in the payment of premiums; (8) Ewing v. Piedmont & Arlington Ins. Co., in the same court in November, 1873, in which the insured paid his premum in part by advertising, and the policy was not countersigned by the agent until after the death had occurred; (9) Lovell v. Accident Ins. Co, in Court of Queen's Bench, June, 1874, reported 3 Ins. L. J. 877, in which the Lord Chief Justice held that walking on a railway track on a dark and rainy night, was exposing one's self to an "obvious risk," though a jury found otherwise; (10) Schaible v. Washington Life Ins. Co., in the District Court at Philadelphia, July, 1873, where a photograph of the deceased taken a week before her death, was allowed to go to the jury as evidence of her ap-

parent bodily condition then, where it was denied that a sudden and unexpected death, within ten days after making application, was a proof of bad faith or concealment, and where the insurers were thus lectured: "If the defendants believe they have suffered from the carelessness of their own agent, they shall gather the useful lesson that receiving and dividing premiums does not comprise the whole duty of insurers." See 7 W. I. Rev. 41.

These cases must be considered in connection with those given in the reporter's third and fourth volumes, if one would learn all the current changes in this branch of the law.

If the apparently hasty manner of Mr. Bigelow's compilation of cases shall arouse a suspicion that he has yielded to the growing mania for making many law books, we trust he will hereafter dissipate such suspicions, as well as also confer on the law student the additional favor we have mentioned, by withholding his fifth volume until he can give us all the cases decided, within some certain period of time, arranged in careful chronological order.

An additional improvement in his next volume will be a studied selection of cases of value, to the exclusion of the less important ones. Some discrimination in this respect must now be exacted of reporters of life insurance cases, in view of the alarming increase of such cases as shown by the figures above given.

The American cases in the present volume exhibit only 48 decisions of the courts of last resort, with 47 opinions and rulings of inferior courts and 11 charges to juries. Without any critical examination of these cases, it must appear to every practitioner that they can not all be of equal value, and that many of them might well be omitted.

It is safe, as a general rule, to exclude charges to juries. When published, only those portions can be of general utility which lay down legal principles. The case before us, at p. 424, of Snyder v. Mutual Life Ins. Co., in the U. S. Circuit Court for Pennsylvania, is a painful example of the redundancy of some modern reporters. Here are 31 pages of the excellent typography of the Riverside Press occupied with Judge Cadwallader's charge to a jury, reviewing all the disputed facts of a hotly contested suicide case, from which we cull this entertaining specimen:

"In this good old town of Bethlehem they don't do as they do in any other place. Mr. Omnibus-man waits five minutes and says, 'They are too late; I guess I'll go home,' instead of waiting. Mr. Snyder knew this, for he said to Mr. Worman,—Mr. Worman don't recollect whether it was before or after that detention at Easton, but this makes it probable it was afterward,—he says to Worman, 'I wonder if the omnibus will be there.' Then you will observe a natural idea of the thirteen minutes detention, and it turned out that the omnibus was not there at Easton. It was a natural suggestion, and the words, 'Are you going to your store? for I don't like passing those bridges at night.' You will recollect that Koerner got killed on that very bridge."

More of this might be excellent in one of the newly patented books of "Instructions to guide jurors in the discharge of their duties;" but the best advice that could be given to any law reporter about to publish such charges among his cases, would be Punch's advice, "Don't!"

Again, the value of the 47 purely legal opinions of the inferior courts is lessened by the reporter's failure to tell us whether or not the judgments were final. Young v. Mutual Life Ins. Co., p. 1, from the U. S. Circuit Court for California, we learn from extraneous sources to have been not only appealed, but to have been decided in the supreme court on an entirely new question, so that the opinion here given is of little or no value. So also, Fitch v. Amer. Pop. L. Ins. Co., p. 217, from 2 N. Y. Sup. Ct. R., 247, was carried to the court of appeals, whose determination of the case upon a point treated lightly in the supreme court, is reported in 11 Albany Law Jour. 91 (see 2 CENT. L. J. 453).

And Tait v. N. Y. Life Ins. Co., p. 479, from the U. S. Circuit Court for Tennessee, was appealed to the supreme court, which, by a divided bench, affirmed at the same time this decision and another to precisely the contrary purport, leaving the question above referred to, of the effect of the late civil war upon Life Insurance contracts, well unsettled.

In Tooley v. Railway Pass. Ass. Co., p. 34, and ten or more other cases reported from the circuit courts of the United States, the amount at issue would have supported an appeal to the supreme court, but no reference thereto is made by the reporter, while Tisdale v. Mutual Ben. Life I. Co., p. 58, doe not disclose the amount involved, so that we can infer nothing as to the possibility of an appeal.

May we not also hope that Mr. Bigelow's industry will lead him to give us a decided improvement in his indexes? We regret to see none in the fourth volume. The two cases of Fahrenkrag v. Eclectic L. I. Co., p. 42, and Mayers v. Mut. L. I. Co., p. 62, upon the powers of the clerk of an agent to bind the insurer, are not indexed under the head of "agent" or "clerk," save that a note under "Agency" refers to "Premium 4" where the former case is indexed. The case upon conspiracy, at p. 254, above referred to, is not indexed under that head. No cases are indexed under either of the heads, "Estoppel," "Fraud," or "Married Woman," though there is a heading "Wife," giving but two cross references. But a great part of the litigation in this branch of the law now falls under the head of "Estoppel" and "Fraud." So "Equity" should, but does not, point the way to the cases of Dutcher v. Brooklyn Life I. Co., p. 665, and St. Louis Mut. L. I. Co. v. Grigsby, p. 633, where equity gave relief that could not have been had at law; Hayner v. American L. I. Co., p. 244, where such relief was at first refused and afterwards granted in part; and Anthracite Ins. Co. v. Sears, p. 127, and Hathaway v. Sherman, p. 93, where the jurisdiction of equity was especially invoked. Norwood v. Guerdon, p. 30; National Life I. Co. v. Minch, p. 240; Same v. Barry, p. 109; and Britton v. Mut. Ben. Life I. Co., p. 359, among others, are all cases where fraud forms so prominent an item of consideration that no index in a volume containing them could be serviceable which ignores that title. And the cases at p. 30 and 109 should also be indexed, but are not, under either "Marriage" or "Married Woman" In Hathaway v. Sherman, there was a devise of a policy, but under the title "Will," no case appears, and there is only a cross-reference to the somewhat obscure heading, "Title to Fund." In short, we do not see how any reliance can be placed on Mr. Bigelow's Index to this volume, so far as completeness is concerned.

The reporter's table of cases fails to name the important cases of *Re* Neuland, p. 283, a controversy in bankruptcy between the assignee and a creditor who had kept the policy alive by the payment of premiums.

The syllabus to Thompson v. St. Louis Mutual Life Ins. Co., p. 165, is as follows: "A condition of a life policy requiring payments of premium on a certain day, may be waived by a custom of the company to receive the same after it became due, though a paper be attached to the policy forbidding the altering of the contract or the waiving of forfeitures by the company's agent." But an inspection of this case discloses that there was *no paper attached* to the policy; the condition referred to was on the margin of the paper on which the policy was printed.

These are samples of defects in Mr. Bigelow's work which a cursory examination discloses, and which it is hoped are not so general that they may not be easily avoided in a succeeding volume.

An investigation into the principles of law established by the decisions in this volume, and the changes, if any, which they indicate, would be a most interesting study; but it must be reserved for another time and place. P.

SWAN'S TREATISE.—A Treatise on the Law relating to the Powers and Duties of Justices of the Peace and Constables in the State of Ohio, with Practical Forms, etc. By HON. JOSEPH R. SWAN. Tenth Edition. 1 Vol. 8vo. pp. XXVII. 1002. Cincinnati: Robert Clarke & Co. Price, $6.00. Sold by Soule, Thomas & Wentworth, St. Louis.

This work has been before the public for nearly forty years. During this period it has grown from a comparatively thin volume of 582 pages, to over 1000 pages, 230 of which have been added in this edition.

It is one of the few books on practice in justice's courts which have acquired a reputation outside the state for which they were written. This is apparently owing to two causes: 1. The author has carefully avoided the statement of rules of law, except such as were stated in the statute books, or established by authoritative precedents. Recollecting that his book was intended chiefly for unprofessional men, he has carefully abstained from perplexing their minds with the discussion of controverted questions. 2. He has incorporated into his text much information of general value, relating to such subjects as Bills of Exchange; Bankers' Checks; Promissory Notes; Assignment of Claims not Negotiable; Interest; Sureties and Guarantors; Common Carriers of Freight and Passengers; Warehousemen; Bills of Lading and their Transfer; General and Limited Partnership; Principal and Agent; Mortgages of Personal Property; Mechanics' Lien, and other Liens; Negligence; Fraud; Sales; Tender; Contracts; Performance; Payment, etc., etc.

Perhaps one of the best compliments which could be paid to the present work would be the statement of the fact that it furnished the model for Judge Kelley's excellent treatise on the same subject for Missouri, a royalty, we understand, having been paid to the publishers of this work for so using it.

When Judge Swan wrote the first edition of this work, forty years ago, he was doing duty as a circuit judge in Ohio. He must, therefore, be well advanced in years, and no doubt feels that the time is approaching when he must set his house in order; for in his preface to this edition, he takes leave of his readers in the following language: "In these, probably the last words which the author will address to the public, he can not but recall, with grateful rememberance, the indulgent reception by the public and bar, of his various compilations, issued during the last thirty-eight years; and he takes this last opportunity to gratefully thank his professional brethren for their uniform kindness and encouragement."

THE NEW YORK WEEKLY DIGEST.—This is the title of a new publication just started by McDivitt, Campbell & Co., of New York, which is designed to embrace the Supreme Court of the United States; the courts of the United States for the southern and eastern districts of New York; the Court of Appeals of the state of New York; the Supreme Court of the state of New York; the Superior Court of the city of New York; the Court of Common Pleas for the city and county of New York; the City Court of Brooklyn; the Marine Court of the city of New York; the Surrogates' Courts of New York and King's counties, and selections from the series of English reports, and the reports of the states of the Union. It is a handsome sheet, the size of the Albany Law Journal, printed on good paper, with large clear type, and may be had for $5.00 per annum.

THE LAW OF MUNICIPAL CORPORATIONS IN THE STATE OF OHIO, Embracing all the Statutes in Force July, 1875, with Notes of the Decisions of the Supreme and Other Courts of the State relating thereto. By HIRAM D. PECK, Assistant City Solicitor of Cincinnati, author of "The Township Guide." Cincinnati: Robert Clarke & Co. 1875. 1 vol. 8vo. pp. xv. 481. Cloth, $3 50. Sheep, $4 00. Sold by Soule, Thomas & Wentworth, St. Louis.

This work being a local one, we can not be expected to notice it critically. It is said to embrace the Municipal Code of Ohio, with all the amendments thereto now in force, inserted in their proper places, and a large number of statutes not included in the code, but which relate directly to the government of municipalities. The text is accompanied with copious notes of judicial decisions. The work has a table of cases and a good index. It is well printed, and generally has the appearance of being a first class work of the kind.

Notes and Queries.

ATTACHMENTS DISSOLVED BY PROCEEDINGS IN BANKRUPTCY.

CHICO, CAL., July 7th, 1875.

EDITORS CENTRAL LAW JOURNAL:—Will you be kind enough to answer the following questions, with authorities:

A defendant in an action by attachment is declared a bankrupt on application of other creditors within four months after levy of attachment. 1. Does this dissolve the lien of the attachment? 2. Can the state courts be divested of jurisdiction after levy, by proceedings in bankruptcy? 3. Would it alter the case any that defendant had been declared a bankrupt the next day after the levy of the attachment?

The first and second questions seem to be answered in the affirmative in Howe v. Union Ins. Co., 42 Cal. Rep. 528. But I can not reconcile this case with Wilson v. City Bank, 17 Wallace, 473, and 1 CENT. L. J. 40.

H. P.

ANSWER.—Section Fourteen of the Bankrupt Act (§ 5044 of the Revised Statutes), in express terms declares that the assignment to the assignee in bankruptcy, shall relate back to the commencement of the proceedings, and by operation of law, shall vest in the assignee the title to all the estate, real and personal of the bankrupt (saving only certain exemptions), although the same is then attached on mesne process as the property of the debtor, *and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings.* As to this provision of the law there is no qualification or exception whatever. There is no room for judicial construction. The only question possible is as to the power of Congress thus to interfere with the attachment laws of the states, and we believe this right has never been seriously questioned.

In reply to the first question, then, we say that the assignment in bankruptcy dissolves absolutely all attachments on mesne process levied within four months next preceding the commencement of the bankruptcy proceedings, upon the property of the bankrupt—without reference, however, to the time when he is adjudicated or declared a bankrupt.

The reply to the second question is obvious, if what we have already stated is correct, viz.: that so far as the property attached is concerned, the dissolution of the attachment divests the state court of jurisdiction over it. Whether the main suit, in aid of which the attachment was made, the court having jurisdiction of the person of defendant by proper service, shall continue or not, depends upon other considerations not pertinent to be considered in this connection.

The third question is of easy solution, if we recur to the provision of the statute above referred to. Several days must necessarily elapse after the commencement of proceedings in bankruptcy, and before the defendant in the attachment suit can be declared a bankrupt. And we have seen that the assignment relates back to the commencement of the proceedings; hence an attachment made one day, before the defendant had been declared a bankrupt must of necessity be subsequent to the vesting in the assignee of all the property of the bankrupt. The attachment then would fail because the title of the assignee relates to an earlier date.

Our correspondent is mistaken in thinking that any conflict exists between the cases he refers to.

Howe v. Union Insurance Co., 42 Cal. 528, relates to an attachment on mesne process by garnishment, where judgment had been rendered and execution issued before bankruptcy, but no levy of the execution made. *Held*, that the lien of the attachment was dissolved by bankruptcy, but no lien under the judgment and execution obtained, because no levy had been made of the execution. This case in no wise conflicts with Wilson v. City Bank, 17 Wallace, 473 (1 CENT. L. J., 40), which latter case held that the lien of an *execution*, after levy of the same before commencement of proceedings in bankruptcy, will not be displaced by such bankruptcy proceedings, though commenced within four months after such levy, and even though the judgment-creditor may know the insolvent condition of the debtor. The cases are entirely consistent with each other.

E. T A.

ADMINISTRATION—RANKING OF CLAIMS.

TROY, MO., July 31st, 1875.

EDITORS CENTRAL LAW JOURNAL:—A. institutes suit by attachment against B., and attaches certain property in the hands of C., as property of B. C. interpleads, claiming the attached property as his own, and gives a delivery bond for the return of the property, with D. as security. Before the trial C. dies and E. is appointed his administrator. Upon the trial the property is found by the jury to belong to B., and after order for the return of the attached property, a judgment is rendered upon the delivery bond against C. and D. Execution issued, and D., the security, pays it off, and procures a transcript of this judgment, and with the consent and advice of E., the administrator of C., has the same allowed against the estate of C. in the fourth class. F., another creditor of C., has his demands duly allowed in the fifth class, before the allowance of D.'s demands in the fourth class. F. knows nothing of the allowance of D.'s demand in the fourth class until the next term of court. The estate of C. will not pay all the demands in the fifth class. The allowance of D. being in the fourth class, which should have been in the fifth class, will be paid before the fifth class creditors.

QUERY.—What is F.'s remedy, if any?

C. M.

Some Recent Decisions in Bankruptcy.

A CREDITOR HOLDING PERSONAL SECURITY FOR PART OF HIS CLAIM, MAY PROVE FOR HIS ENTIRE CLAIM AS UNSECURED.

In re Anderson, U. S. D. C., W. D. Wis. Hopkins, J. July 22, 1875. The bankrupt, in order to obtain credit from the firm of Richards, Shaw, & Winslow, procured John Lewis to guarantee the payment of goods purchased of them by him, to an amount not exceeding two thousand dollars, whereupon credit was extended to him by said firm, to the sum of about three thousand dollars, and he was indebted to them for goods sold when he was adjudicated bankrupt, to about that amount, two thousand of which was secured by the guarantee of Lewis as above stated.

Richards, Shaw & Winslow filed their entire claim as an unsecured claim, mentioning in their proof the guaranty of Lewis. The assignee objected to the allowance of the whole as an unsecured claim, contending that as to the amount guaranteed it should be treated as a secured debt, and proven as such.

The court held that a secured debt within the purview of § 5075, R. S. (old section No. 20), must be a debt secured by property, real or personal, of the bankrupt, that may be surrendered or conveyed to the assignee, and the estate in his hands be augmented thereby; and that Richards, Shaw & Winslow, had the right to prove the full debt against the estate of the bankrupt as an unsecured debt. Citing *Ex parte* Hidersly, 2 M. D. & D. 487; In Parks Case, 18 Vesey, 65; *Ex parte* Goodman, 3 Maddox, 373; *In re* Plummer, 19 Eng. Chy. 56; Peacock's Case, 3 Glyn & Jameson, 27; *Ex parte* Adams, 3 Mont & A. 265; *In re* Babcock, 3 Story R. 399; *In re* Crain, 1 B. R. 132. The court then referred to § 5070 (old section 19), which authorizes any person liable for the bankrupt, as bail, surety, etc., to prove such debt when not paid, in case the creditor holding them fails to make proof thereof, as confirming the foregoing view of § 5075; and, citing In Rakes & Todd, 8 Ad. & E. 846, and Bowdell v. Lydall, 7 Bing. 489, attempts to determine a matter not presented for decision, viz., in what manner Richards, Shaw & Winslow, should appropriate the dividend they might obtain, if any. The conclusion reached by the court is equitable, and supported by the authorities, to-wit, that the dividend should be applied *pro rata* to the amount of the claim unsecured by the guaranty, and to the amount thereby secured, thus giving to the guarantor the same advantage as if he

should have paid the creditor two thousand dollars, and then proved a claim against the bankrupt for that amount. But this point did not arise in this case—the guarantor Lewis was not before the court, and an adverse decision would not have affected his rights.

E. T. A.

Legal News and Notes.

—JUDGE MARTIN GROVER, of the New York Court of Appeals, is dead.

—THE late Professor Joel Parker died at the advanced age of eighty years. He was for many years a professor of law at Cambridge.

—MR. DION BOUCICAULT has sued Mr. Robert McWade for pirating his drama "Rip Van Winkle, or the Sleep of Twenty Years."

—NASH & NASH, is the title of a Columbia, (Me.), law firm. The partners composing it are partners in matrimony as well as in law.

—THE publishers of the Ohio State Reports, Messrs. R. Clarke & Co. of Cincinnati, have adopted the excellent practice of issuing their reports in installments of one hundred pages each..

—THE head-note and valuable foot-note to the case of Obde v. The N. W. Life Ins. Co., elsewhere printed, was prepared by John A Finch, Esq., of Indianapolis, who has given much attention to the law of life insurance.

—MR. JAMES VICK of Rochester, N. Y., has issued No. 4 of his "Floral Guide," being the last number for 1874. It is beautifully printed and illustrated, and contains a variety of information for cultivators of flowers, applicable to the approaching autumn and winter. The next number will be issued on the first of December.

—PRINCE LASCAIRS has sued five churches in Rome, under the Roman law. He claims descent from Constantine, who was the liberal patron of these churches. Under the canon law, the descendants of the patron may demand sustenance. His demand was rejected, not because it was not good in law, but because the descent from Constantine was not satisfactorily made out.

—THE funeral of the late Professor Joel Parker was solemnized on the 20th ult., at Cambridge. There was a large attendance of members of the bar and other prominent men. The body was buried at Mount Auburn. The pallbearers were Ex-Governor Washburn, Judge Gray, Professor Parsons Messrs. M. Everett, B. M. Mason, J. P. Millidge and J. M. Dutton.

—THE late Horace Binney was, at the time of his death, in his ninety-fifth year. He graduated at Harvard in the class of 1797, and was admitted to the bar in 1800. Fifty years ago he was a leader of the Philadelphia bar. In 1832 he was elected to Congress, but declined re-election. It is said that his argument in the Gerard Will case saved that magnificent bequest to the public. He was the author of Binney's Reports.

—THE Department of Justice will enter suits at an early day against the parties implicated in the marine corps swindles. The prosecution will undoubtedly bring to light a great many other shortcomings than those referred to in the Chronicle on Monday last. The officers implicated will undoubtedly be tried by a military court martial, in addition to the civil prosecution. —[*Washington Chronicle.*

—SOME of our readers may be surprised to learn that the Supreme Court of the United States is still in session, although the judges are scattered around at various watering places; for the New York Herald continues to report abstracts of its decisions dated from Washington. Will not some one remind that great journal that the Supreme Court of the United States adjourned in May last, and that in the decisions it is now reporting, it is not much in advance of Wallace's Reports, and far less accurate.

—AN ITALIAN commission, headed by Signor Mancini, will shortly visit England to prosecute enquiries concerning the burial place of Albericus Gentilis, who was Regius Professor of Law at Oxford, and who has some claim to precedence over Grotius, as the founder of international law. An address has been drawn up by Signor Tabarrini, which will be promulgated on the re-opening of the Italian universities, setting forth Gentilis' claims to the consideration of his country.

—HON D. M. KEY, Chancellor of the Chancery Court at Chattanooga, Tennessee, has been appointed by the governor of Tennessee to the office of United States Senator, made vacant by the death of ex-President Johnson. He will hold his office for about six weeks, until the meeting of the Tennessee legislature in January, and for five years thereafter, if the legislature should be so minded.

—HON. DANIEL H. CHAMBERLAIN, LL. D., Governor of South Carolina, delivered an eloquent address before the Yale Law School, on "Some of the Relations and Present Duties of the Legal Profession to our Public Life and Affairs." We gather from it that Governor Chamberlain does not despair of the republic, is opposed to codification, and in favor of returning to a sound currency.

—DR. KENEALY has protested in Parliament against the lenity of Colonel Baker's sentence. Tichborne is sentenced to hard labor, but Baker is sentenced to imprisonment without hard labor. Kenealy thought this no punishment. But a member mentioned that when the learned Doctor was once found guilty of brutal treatment of his illegitimate son and sent to prison for a month, he thought the penalty severe enough, though there was no hard labor in it. Kenealy thought this reference to his personal history unnecessary and unpardonable.

—THE court of claims have decided in favor of the Union Pacific railroad, in a suit of that company against the United States, to recover the sum of $512,632, being one-half of certain freight earnings retained by the government to pay the interest of the bonds of the company guaranteed by the government. An appeal from the decision of the court was filed on the tenth of July, and the question now before the supreme court, is said to be whether the facts found by the court of claims, warrant its conclusion in law.

—THE Mount Vernon, Illinois, Free Press states that Mr. Chief Justice John M. Scott entered upon his duties as the head of the judicial department of that state government, at the term of the supreme court just held at that place. At the time of the re-organization of the court, under the provisions of the constitution of 1870, Judge Scott was the youngest member of the bench. He is the only native Illinoisan who ever occupied his present position, he having been born and raised in St. Clair county.

—GENERAL SHERIDAN'S CONFISCATION SUIT.—In 1867, while General Phillip H. Sheridan was in command of the military department including Louisiana, it is alleged that he confiscated property consisting of 550 acres of grown corn, 150 hogsheads of sugar, 63 mules, 250 barrels of molasses and 18,000 barrel staves, the same being on the plantation of James A. Whelan, in the parish of St. Charles and state of Louisiana. In 1869 Mr. Whelan commenced suit in the United States Circuit Court, in this district, against General Sheridan, to recover $358,778.57, the alleged value of the said property. General Sheridan's defence is that he was merely obeying orders.

—A CURIOUS PENSION CLAIM DECIDED.—The following curious case has come before the commissioner of pensions, upon which he has just rendered a decision: A woman in Tennessee, who had been married, and whose husband deserted in 1860, was married again in 1862 to another man without an actual divorce, although the law of Tennessee makes desertion for two years good ground for divorce. The second husband became a soldier and died in 1865. In 1873 the legislature of Tennesses passed an act legalizing the last marriage, and the woman now is an applicant for a pension as the widow of her soldier husband. The commissioner holds that, as the first parties had not been divorced at the time of the death of the soldier, when the claim, if any, accrued, the woman was not the lawful wife of the soldier, and that the act of the Tennessee legislature, being retroactive, is unconstitutional and would be void if it applied to the claim.—[*New York Herald.*

—A CASE of appeal which came up before the Calcutta High Court the other day, is an amusing illustration of the extraordinary ideas of law and justice which are still to be found among some of the subordinate judicial officers in the Provinces. A native gentleman asked a number of his friends to a dinner party. His guests accepted the invitation; but when the day came, they for some reason best known to themselves did not attend, nor did they send any apologies. Thereupon the host promptly sued them for the price of the food which he had povided for the banquet, and which, through their want of courtesy, had been wasted. The Moonsiff who heard the case, thought the cause of action a good one, and gave the insulted host a decree for the amount claimed. The High Court, it need hardly be said, took a more rational, if less sentimental view of the matter. The Moonsiff's decision was reversed, the presiding judge remarking with grim humor, that if the law laid down by the lower court were correct, "then the risk of accepting invitations would be very serious indeed."—[*The London Law Journal.*

—REVERDY JOHNSON has written a letter to the New York Tribune on the "Nation's Currency," in which he makes the following observations concerning the decisions of the Supreme Court of the United States in Knox v. Lee, the celebrated legal tender case, which overruled Hepburn v. Lee: "The opinion of the court in the last case was given by Mr. Justice Strong, and is a very able one, and those who know him as well as I do, can have no possible doubt that it was conscientiously given. By what I am about to say, therefore, of that opinion, no one I hope will believe that I intend to cast a reflection on that learned judge, or on those who concurred with him. For the present members of the court, I entertain the highest esteem, and I am sure that I speak the truth when I say that no more able or enlightened men ever occupied the judicial station than those who have filled our national tribunal from its organization to the present time But their judgments have never been thought infallible They have been reversed by themselves in other instances than the one I am considering. And, indeed, Mr. Justice Strong, in this very case, properly says 'that it is not only the right but the duty of the

court to reverse a prior judgment when convinced of its error.' He then proceeds to point out what seem to him to be the errors of the decision, and says 'that it is by no means certain that the latter judgment will not be reversed.'"

—CARDINAL MCCLOSKEY AND ATTORNEY-GENERAL PIERREPONT.—Something refreshing comes from Brooklyn, refreshing because it is not a scandal. It is told in "Stiles' History of Brooklyn," and relates to two worthy men, Cardinal McCloskey and Attorney-General Pierrepont, and to two worthy women, the mothers respectively of these two gentlemen. The cardinal and the attorney-general are both natives of Brooklyn, and were both born in the middle of the same cold winter. McCloskey's father, who was a poor milkman, lived in a humble house near the residence of Hezekiah B. Pierrepont. Just after the birth of the babe who was to grow up and become a prince of the church, Mrs. McCloskey was taken very ill, and was unable to nourish her child. In this emergency, Mrs. Pierrepont, hearing of the helpless condition of the mother and her infant, went herself and nursed the child until the mother was able to do so—a state of affairs which must have been very humiliating to a milkman. Mrs. Peirrepont's own child and the one which she charitably nursed at her breast, advanced through the world with equal thrift. One went into the law and the other into the church, and each has reached the highest position in his calling.—[*Chicago Times.*

—SOME time since, one Miller, an ex-guager, who was closely identified with the Chicago whisky-ring men in their palmy days, was discharged from his position for some technical irregularities in his accounts. The secret service men at once took hold of Miller, and by proper management impressed him into their service, to assist in the conviction of members of the ring. For sometime it was supposed that the ring was unaware of the fact of Miller's going back on them, and depending upon this Miller was accustomed to going to their meetings with the object of spying, and reporting proceedings to the Detective Bureau. On Friday evening, however, when, according to custom, he put in an appearance he was suddenly attacked by a man who drew a pistol and fired, with the evident intention of shooting Miller through the heart. The ball, however, struck his arm and thus saved his life. As the man who fired the shot had his face averted, Miller was unable to recognize him, but there is little doubt but that it was a member of the ring, who had determined to put him beyond the possibility of giving evidence. The government hereafter take care of Miller and will keep him in a place of safety until his services are required to testify against the ring.—[*Washington Chronicle.*

—APROPOS of the O'Connell centennial, a foreign correspondent tells the following anecdote illustrative of his acumen: "O'Connell was defending a prisoner who was being tried for a murder committed in the vicinity of Cork. The principal part of the evidence was strongly against the prisoner, and one corroborative circumstance mentioned was that the prisoner's hat had been found near the place where the murder had been committed. A certain witness swore positively that the hat produced was the one which was found, and that it belonged to the prisoner, whose name was James. 'By virtue of your oath,' said O'Connell, 'are you positive that this is the hat?' 'Yes,' was the reply. 'Did you examine it carefully before you swore in your information that it was the prisoner's?' 'Yes.' 'Now let me see,' said O'Connell, as he took up the hat and began to examine the inside of it with the greates care and deliberation, and spelt aloud the name of 'James,' slowly, thus: 'J-a-m-e-s.' Now, do you mean those letters were in the hat when you found it?' demanded O'Connell.' 'I do,' was the answer.' 'Did you see them there?' 'I did.' 'This is the same hat?' 'It is.' 'Now, my lord,' said O'Connell, holding the hat up to the bench, 'there is an end to this case; there is no name whatever inscribed in the hat.' The result was the acquittal of the prisoner."—[*Albany Law Journal.*

—DR. KENEALY'S CONVICTION.—Curiosity having been excited as to the terms used by Lord Campbell, when summing up the trial of Dr. Kenealy, in April 1850, for the alleged excessive punishment of his son, we produce the following extract from the proceedings: "Lord Campbell said: This is a most distressing case, but you (the jury) and I must deal with it according to the rules of law, and must recollect the oaths we have taken. I rejoice that the whole truth has come out, and that no serious stain will attach to the character of Mr. Kenealy. He appears to have taken the most tender care of this child, who is his illegitimate child, and that he has treated the child with all kindness, and taken care of his education as well as his personal wants; but we must consider whether part of this charge is not clearly made out, and if it be it will be your duty to return a verdict of guilty. His Lordship told the jury that they must acquit on the first count, though he could see no reasonable doubt as to the second." When called up for judgment on May 31st, Mr. Crowder, for the guardians of the West London Union, did not press for heavy punishment. Mr. Justice Patteson, in delivering judgment, said: "The motive on which Kenealy inflicted personal punishment appeared to have been to correct the child for its own good, and not from any wrong feeling on the defendant's part. Taking all the circumstances into consideration, the court felt there was no ground for imputing that the defendant meant to do anything wrong, but he inflicted a punishment in an excessive manner, which could not be justified, and therefore the court felt bound to punish him as an example to others not to exceed the bounds of moderation in chastising children. Sentenced to one month's imprisonment in the Queen's prison—of course, in the first class."—[*The Law Times.*

—LORD LYTTON'S description of O'Connell at a monster meeting:—

"Once to my sight the giant thus was given,
Walled by wide air and roofed by boundless heaven,
Beneath his feet the human ocean lay,
And wave on wave flowed into space away,
Methought no clarion could have sent its sound,
E'en to the centre of the host around;
And as I thought, rose the sonorous swell,
As from some church tower swings the silvery bell,
Aloft and clear from airy tide to tide
It glided easy, as a bird may glide—
To the last verge of that vast audience sent;
It played with each wild passion as it went;
Now stirred the uproar—now the humor stilled,
And sobs or laughter answered as it willed.
Then did I know what spells of infinite choice
To rouse or lull has the sweet human voice,
Then did I learn to find the sudden clew
To the grand, troublous life antique—to view,
Under the rock-stand of Demosthenes,
Unstable Athens heave her noisy seas."

—THE knells of four of the great courts which have been already consolidated into one "Supreme Court of Judicature," have been successively rung in the columns of the Times. And upon Tuesday last the leading journal presented its readers with a well-executed historical account of the court of chancery, which has just risen for the vacation "and will never sit again." We would recommend those of our readers who should happen to be interested in something more than the technicalities of "concurrent administration," to study the three columns and a half which the Times devotes to tracing the history of the court "which was originally the source and fountain of the common law," and whose equitable jurisdiction only arose in after ages "when the nature of men's relations and transactions were no longer to be provided for by simple remedies." It is unfortunate, however, that the writer should have shown a bias towards equity upon an occasion when the rival claims of law and equity ought to have been stated and pronounced upon with judicial fairness. He speaks, for instance, of "a stupid rule of the common law that payment of a bond debt could not be proved unless by an acquittance under seal." The rule, "which was soon dropped," may have been stupid enough, but the writer might well have mentioned one or two of the admitted defects of the equity system, such as the admission of hearsay evidence, and the invention of the doctrine of "illusory appointments." See 11 Geo. 4 & 1 Will. 4, c. 46, which reciting that "considerable inconvenience hath arisen from the rule ofequity," establishes the rule of law in this curious case of conflict. It is, we think, the chief merit of the new procedure about to come into operation that, recognising the defects of both systems, it has taken care to provide for the survival of the fittest parts of both. Those who imagine that a reign of entirely equitable procedure and practice is about to be inaugurated will soon find out their mistake.—[*The Law Times.*

—OLD TIME BILL OF LADING.—The following is a *verbatim* copy of an old bill of lading, dated December 24, 1773, and shows among other things, the dependence upon Deity pervading the merchants of that day:

"SHipped by the Grace of God, in good Order and well condition'd, by William Lee, in and upon the good ship called the Friendship, whereof is Master, under God, for this present Voyage, William Roman, and now riding at Anchor in the River *Thames*, and by God's Grace bound for Virginia, to say, One Case, one Trunk, one box of Merchandize, being mark'd and numbered as in the margin, and are to be delivered in like good order and well condition'd, at the aforesaid Port of Virginia, (the Danger of the Sea only excepted) unto Mrs. Anne Washington, at Popo's Creek, Potomac River, or to her Assigns. Freight for the said Goods being paid, with Primage and Average accustom'd. In Witness whereof the Master or Purser of the said Ship hath affirmed to 3 Bills of Lading, all of this Tenor and Date; the one of which 3 Bills being accomplish'd, the other 2 to stand void. And so God send the good Ship to her desir'd Port in Safety.—*Amen.*

"Dated in London, 24th Dec. 1773.

"WM. ROMAN."

On the margin is a nine-penny stamp, of the customs, and the usual invoice marks. The owner will present it to the Alexandria, Washington Lodge museum.